Report of the Charity Commissioners for England and Wales for the year 1988

Presented pursuant to the Charities Act 1960, s. 1(5)

Ordered by The House of Commons *to be printed 17 May 1989*

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HER MAJESTY'S STATIONERY OFFICE
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Charity Commission
St Alban's House,
57–60 Haymarket,
London SW1Y 4QX
11 April 1989

TO THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Sir,

We, the Charity Commissioners for England and Wales, have the honour to make our report for the year 1988 in pursuance of section 1(5) of the Charities Act 1960.

We have the honour to be,

Sir,

Your obedient servants,

R I L GUTHRIE

C A H PARSONS

J FARQUHARSON

D H YEO

M WEBBER

Contents

Introduction

1. 1988 was a turning point for the Commission. In his statement to Parliament on 21 January, the Home Secretary announced the Government's decision to legislate to strengthen our powers to supervise charities and to deal with abuse on the lines recommended by Sir Philip Woodfield in his Efficiency Scrutiny of the Supervision of Charities. Later in the year, the Home Secretary announced that the Government intended to publish a White Paper setting out its detailed proposals for that legislation. In November, the Government invited Parliament to approve a Winter Supplementary Vote to make money available to us to carry forward those proposals arising from the Woodfield Report which do not require primary legislation and which enable us to lay the foundation to become the effective supervisory body of charities which Parliament, the public and charities alike have come to expect.

2. In February, the Committee of Public Accounts published its report into the Monitoring and Control of Charities following an examination of the Commission based on the Report by the Comptroller and Auditor General (National Audit Office). We share the Committee's concern that the integrity of the charitable sector should be secured and protected and that the deficiencies in the Central Register of charities, and in the submission and examination of charity accounts, should be rectified. We greatly welcome, therefore, the Government's commitment to legislative reform which, while relieving us of certain responsibilities, will at the same time strengthen our powers of investigation and remedy. We also welcome the allocation of resources which will enable us to enhance our monitoring and investigative work, computerise the Register of charities and obtain and examine charity accounts to a far greater degree. We discuss these proposals in greater detail in the body of the report but it may be helpful to mention briefly the principal measures we have taken to date to strengthen the management of the Commission, divert resources to monitoring and investigative work, initiate the computerisation programme and otherwise implement the Woodfield recommendations.

3. An important step in strengthening the management of the Commission was the appointment by the Home Secretary, in January 1989, of two additional part-time Commissioners, Mrs Diane Yeo and Mr Michael Webber. Mrs Diane Yeo is currently consultant to the Centre for Voluntary Organisation at the London School of Economics, and was a founder and the first director of the Institute of Charity Fundraising Managers. Mr Michael Webber is chairman of Pifco Salton Carmen, a director of Generics Holdings Corporation Limited, chairman of SEAMA (Small Electrical Appliance Industry Association) and a chartered accountant. The part-time Commissioners share responsibility with the full-time Commissioners for the functions of the Commission and its decisions both legal and administrative. Their appointment has strengthened the Commission's senior management structure and will bring positive outside influences and fresh thinking to bear on the Commission's aims, methods and priorities. With her extensive experience in charity fundraising, Mrs Yeo is particularly well placed to take the lead in the Commissioners' efforts to promote the self-regulation of charities, for example by means of charities preparing and issuing voluntary codes of practice for fundraising. Mr Webber's experience of running a successful enterprise, his financial expertise and his knowledge of management techniques will enable him to make an important contribution to the management of the Commission during a period of great change.

4. With these appointments, both the Board of Commissioners and the Board of Management, which was established in 1987, are enlarged. The rôle of the Board of Management has been consolidated during the year. It is responsible for all major policy decisions concerning the internal management of the

Commission. The day-to-day management is now vested in a Management Executive, which meets on a more frequent basis and works within the framework laid down by the Board of Management. The Board of Commissioners remains responsible for ensuring that the Commissioners' statutory functions in relation to charities are carried out. The management structure which is now in place should enable us to respond to the challenge of the major legal and administrative changes which we will encounter over the next few years. In paragraphs 96 to 99 we report on the development of our internal systems of financial and management control, and we discuss our proposals for relocating part of our London Office in paragraphs 91 to 94.

5. In paragraphs 57 to 63 of our report for 1987 we noted the Woodfield Report's recommendation that we should employ consultants to work out a scheme for returning investments held by the Official Custodian to trustees, and we described the findings of the initial study by Touche Ross. In November 1988 the Home Secretary announced the Government's decision that the Official Custodian's function of holding investments for charities should cease and that the investments held by him would be returned to charity trustees. It is consonant with the basic thrust of the Woodfield Report that trustees should take greater responsibility for charity property under their stewardship, and the decision should, in the long term, facilitate a redirection of the Commissioners' resources towards monitoring and investigation. We discuss the matter further in paragraphs 85 to 88.

6. In our report for 1987 we also noted that the Government's acceptance of the Woodfield Report's proposals enabled us to undertake the computerisation of the Central Register. Computerisation is essential if we are to rectify the current deficiencies of the Register. A computerised Register will contain and provide more comprehensive information to the public about charities, and at the same time assist us in our supervisory and other functions. During 1988 we took an important first step by engaging BIS Applied Systems Ltd to carry out a study into the practicalities of computerising the Register. Computerisation and the form of the Register in the future are dealt with in more detail at paragraphs 18 to 22 below.

7. We noted last year that the Woodfield Report made a number of recommendations concerning charity accounts. In view of those recommendations, we issued on 1 August a consultation paper which set out to discuss and identify the scope of the statutory regulation of charity accounts which would be necessary to achieve adequate public accountability from charity trustees, and to provide an adequate basis for the monitoring and supervision of charities. We received a total of 47 responses from a wide range of people and bodies interested in the subject including Government departments, professional bodies, accountancy practitioners, individuals, organisations working with charities and charities themselves. We are grateful for all the comments we received. They were of assistance to us in formulating our own views on the subject and these have been taken into account in the preparation of the White Paper.

8. The Woodfield Report recommended that the Commissioners should consult widely on possible ways of relaxing the cy près doctrine and advise the Home Secretary whether legislation would be desirable. Accordingly, we conducted a review in which we examined the legal basis for, and our current application of, the doctrine and canvassed the views of interested parties. Our conclusion, which we reported to the Home Secretary, was that legislation is unnecessary, but that we should interpret the cy près doctrine with as much flexibility and imagination as the law now allows. The background to this decision is discussed further at paragraphs 50 to 55 below.

9. The Woodfield Report also noted that we were considering our rôle in the regulation of the level of maintenance contributions paid by residents of almshouses. We have now concluded that it is possible for us to reduce substantially our involvement in this work, thereby creating the scope for redeployment of staff to other areas of work. This subject is discussed further at paragraphs 63 and 64 below.

10. A major task for us, and for the senior staff of the Commission, during 1988 and the early months of 1989 has been consideration of the proposals for legislation and our participation in the preparation of the White Paper. It was of great assistance to us, in considering many of the important issues covered by the White Paper, to be able to take account of the views expressed at a Charity Law Seminar, which we arranged in October 1988 and which was attended, amongst others, by members of the Chancery judiciary and persons prominent in the practice of charity law.

11. While we have been taking steps to implement those recommendations of the Woodfield Report concerning our procedures and internal management and have been working, together with colleagues in other Government Departments, on the proposals which will require legislation, the work of the Commission has continued as reported in the body of this report. In Appendices A and B we mention certain decisions of the courts and recent legislation affecting charities. One issue which, although not directly within the Commissioners' remit, attracted a great deal of interest in 1988, and which we think timely to discuss in this annual report, is the relationship between charities and broadcasting (see paragraphs 13 to 17).

Developments in Europe

12. We are concerned about the possible effects of developments in Europe on the law and practice relating to charities in England and Wales. The conception of charity in countries with a legal system based on the common law is something which we share with Ireland but with no other member state of the Community. While the term "charity" is used in some countries—at least in those dependent on the civil law—they tend to restrict its meaning to organisations for the relief of poverty and distress. Whilst most member states have organisations devoted to other purposes which we regard as charitable, and may provide some fiscal benefit for some of them, they are not regarded as various exemplifications of a single concept of charity. How our legal conception of charity will fare in the face of pressures towards the assimiliation of institutions and practices within the European Community over the coming years remains to be seen. We are anxious that we should have as early warning as possible of developments which, though not necessarily directed to charity as such, are likely to affect a wide range of charities in practice. Such developments may be fiscal; or they may concern such matters as the licensing of minibuses or the accounting requirements of companies. Accordingly we have appointed to advise us as consultant on relevant developments, Mr Harry Kidd, emeritus fellow of St John's College, Oxford, and Director of the Legislation-Monitoring Service for Charities.

Charities and Broadcasting

13. In December the Chief Charity Commissioner delivered in Cardiff the first Wynford Vaughan Thomas Memorial Lecture under the auspices of the

BBC and the Welsh Council for Voluntary Action. He chose as his theme the relationship between charities and broadcasting. There follows a summary of the central part of his speech. (Copies of the full text are available from our offices at St Alban's House).

14. Broadcasting is one of the most powerful and effective means of arousing people's instinctive capacity to identify with, and to participate in the relief of suffering all over the world. This major responsibility will in no way diminish under the new arrangements for broadcasting heralded in the Government White Paper published in November 1988.

15. The televised general charitable appeal, such as ITV's Telethon, BBC's Children in Need Appeal, and Comic Relief, is an exciting recent development in broadcasting. Such initiatives reach people who do not give regularly, and those who are not generally in the habit of contributing to charities. It is essential that the criteria of journalism and broadcasting be met. Nothing is worse than an amateurish production in a world where professionalism counts—and shows. But for a programme on charity, other criteria have to be applied. There must be no exploitation. The messages of the media must serve to communicate between donor and recipient in such a way as to enhance the standing of both. Secondly, the impression should never be given that charity is simply about money. Personal involvement derived from such programmes may well have a more lasting impact than any number of donations. Finally, charity needs a structure beyond that of an ordinary radio or television programme. Ideally a televised appeal should involve the beneficiaries in the programme-making, provide a mechanism by which listeners and viewers can respond, and a system for distribution and follow up. The way in which moneys donated are distributed is as important as the way in which they are raised. Any whisper of inefficiency or careless direction could have an inordinately destructive effect on the whole relationship of charity to broadcasting, and on the willingness of people to give. High standards in such matters are crucial: they cost trouble, time and money.

16. Although advertising by charities is already permitted on Cable Television, there remains a division of opinion and anxiety about advertising on the normal television channels. The IBA is moving with caution to relax the provisions against paid advertising, and indeed the advent of advertising seems inevitable. When it is introduced it is to be hoped that two points will particularly be borne in mind. First, that the interests of the smaller charities will be met. Secondly, that advertising on television will not give rise to the exploitation of charity for commercial gain. As fund-raising for charities has become more important, and more extensive, so people have moved into the field, or adapted their existing operation, for reasons of good business rather than from any charitable motivation. There is nothing intrinsically wrong with that: charity needs more business skill and know-how, not less. But it is clear from recent experience in fund-raising that the advent of people who know nothing—and perhaps care nothing—for charity and for the needs that charities meet, is not all to the good. Some of Sir Philip Woodfield's Scrutiny recommendations are directed at this problem. Advertising on television and radio should not exacerbate the problem.

17. In facing up to the challenge posed by a new era for broadcasting, charities will need to understand broadcasting and the changes it is undergoing. It is likely that in future there will be more opportunities for programmes to which charities could seek access, as a result both of a greater number of channels and services and also of less restrictive regulatory requirements. This is the case at the local as well as at the national level. Local radio, for example, promises plenty of scope for further developments—not least on behalf of charity. At whatever level, the more professional charities can become in their approach to broadcasting, the more successful they should be.

Registration of Charities

(a) Computerisation

18. It has long been recognised that an up-to-date computerised Central Register would provide a much improved source of basic information about registered charities and be a strong foundation for a more effective system of supervision. As we noted in our report for 1987 this view was endorsed by the National Audit Office Report into the Monitoring and Control of Charities which concluded that the Central Register of charities was unreliable and out of date and that an up-to-date and reliable Register was essential for the effective monitoring and control of charities. The Public Accounts Committee Report on 3 February 1988 also urged us to take all possible and practical steps, including the computerisation of the Register, to secure the necessary improvements in our supervision of charities. The Woodfield Report recognised that the computerisation of the Central Register was essential in order to shift the emphasis of our work towards one of active monitoring and supervision of charities. In essence these Reports identify the future purposes of the Central Register as

(a) giving the public (whether potential donors or beneficiaries or voluntary coordinating bodies) access to basic information about the existence of charities, their purposes and the resources available to them;

(b) providing conclusive evidence of the charitable status of registered institutions which in turn facilitates donations, tax and rating relief, and confirms that they are indeed subject to the jurisdiction of the courts and the Commissioners;

(c) establishing public accountability by trustees of moneys entrusted to them; and

(d) providing the basis for a comprehensive system of supervision of charities.

19. The Government's endorsement of the Woodfield Report has enabled us to take forward our plans to computerise the Central Register. We have engaged BIS Applied Systems Ltd to determine the nature and scope of the information which should be held on a Charity Database, the means which should be adopted to collect the data, convert and store the data to electronic format, and the systems and resources which would be needed to process and index the information. In our view the development of the Database is essential if the objectives of the Woodfield proposals, and the expectations of Parliament and public are to be met. We look forward to receiving the consultants' detailed proposals by early summer of 1989.

(b) The New Register

20. It may be helpful to outline our thoughts on the future form of the Register. We intend that, in the first instance, the existing information on the Register will be transferred on to the computerised Database. Registered charities will then be invited to confirm the details of their registration, and provide up-to-date information and accounts for the Register. Thereafter, they—and all charities that register subsequently—will be required to provide information on a regular basis. This will ensure that the Register is kept up to date. This annual return may also require other information which will not be included on the public Register, but which we will need mainly to carry out our supervisory functions. Depending on the results of the consultants' study and the anticipated costs, there may be scope for the computerised Register to include other useful information, in addition to that shown on the existing registration index slip and we have been in discussion with relevant organisations to determine what would be most useful.

21. The submission of an annual return together with the charity's accounts will fulfil the basic requirements of public accountability. As we noted in paragraph 25 of our Report for 1987, we believe that failure to make an annual return could result in the marking of the charity's entry on the Register. This

would act as a trigger to the Commissioners' monitoring procedures and might lead to further investigation and the possible use of the Commissioners' protective or remedial powers.

22. By inviting all currently registered charities to confirm the details of their registration, it will be possible to identify on the Database those charities whose registered particulars can be relied upon with some degree of confidence. Those charities which do not reaffirm the details of their registration will be identified as those for which information is unreliable and the charities themselves as subject to further inquiry.

(c) Generally

23. During the year the promoters of 3,092 proposed organisations, and 2,395 established bodies, consulted us about the wording of their governing instruments and their registration as charities. We registered 3,609 charities and removed 451 from the Register on the grounds that they had been wound up or had ceased to operate. The number of charities registered at 31 December 1988 was 164,534.

24. New charities continue to reflect changing social needs and circumstances; and the largest group of new registrations relates to social, cultural and educational purposes. We have, for example, registered trusts connected with the Tate Gallery and the National Gallery, one concerned with the acquisition of pictures for exhibition, and the other with advancing education through the publication of material related to the Gallery's paintings. The first two City Technology Colleges have been registered on the basis of a model memorandum and articles of association agreed with us, and we were able to assist with the setting up of the Parliamentary Science and Technology Information Foundation which provides Members of both Houses of Parliament and their constituents with authoritative information and assessments upon scientific and technological research and education relevant to the United Kingdom. We registered after useful discussion the Educational Broadcasting Services Trust which was set up to promote and develop the education of the public through broadcasting. The Trust will work with the BBC, Independent Television, Channel 4, independent local radio, independent production companies and other educational bodies mainly on the commissioning of educational programmes and providing information and promotional support services. We have also registered the British Foundation for the Industrial Space University which advances education in space related studies and promotes academic research in that field. The Foundation will also award scholarships, grants, allowances and prizes to students attending the International Space University of Boston, Massachusetts, and to other students or persons engaged in research into any branch of space technology and related sciences.

25. Following advice given by the Attorney General in 1981 about the setting up of disaster appeals in either a charitable or non-charitable form (see Appendix A of our Report for 1981) those engaged in the daunting and challenging task of meeting the needs of those affected by tragic accidents and disasters have not generally set up funds subject to the restrictions of charity trust law. During the year, however, we have registered two charities for the relief of suffering and distress among the victims and dependants of the recent earthquake disaster in Armenia. We have also registered the Philippines Ferry Disaster Fund for the victims of the disaster which occurred in December 1987.

26. We were pleased to be able to advise the American Ireland Fund (a charitable corporation in the USA) in founding the Ireland Fund in this country. It is encouraging to report genuine charitable effort from abroad directed to help and heal wounds inflicted upon the province and indeed the whole of Ireland. The Ireland Fund of Britain has been set up with a distinguished body of trustees and with objects directed to the relief of poverty, distress and suffering, and the advancement of education among the peoples of

Ireland by various means (including the provision of medical facilities, bereavement counselling, and shelter). Similar Ireland Funds have been established in Canada and Australia and all are supported by people of both Nationalist and Unionist roots in Ireland. Hitherto, the Funds have been providing a community service and helping not only in the solution to the problems brought about by the sectarian conflict of Northern Ireland, but also in relation to educational and youth projects requiring urgent funding.

The Commissioners' Decisions on Charitable Status

27. As a Board we considered an application for registration which we believe raises a point of general interest in relation to the extent to which the political views of the trustees of an organisation may be taken into account when considering the charitable status of the organisation.

The Institute for the Study of Terrorism

28. The Institute was established on 1 June 1986 as a partnership of two people in order to carry out and promote research and study into terrorism and the activities of terrorists, and by the dissemination of such research to provide education and information to the public. The partners subsequently resolved that a fund be established for charitable purposes only and a declaration of trust was executed on 14 January 1988 setting up the Institute as a trust. The declared objects of the Institute were:

> "the undertaking, promotion and commission of research into terrorism and the activities of terrorists and the dissemination of the results of such research in order to increase the store of communicable knowledge for the education and benefit of the public".

The Deed included provisos restricting the objects "to those which are charitable according to the law of the United Kingdom" (sic) and precluding the trustees from engaging in political activities.

29. The Deed defined "terrorism" in terms derived from section 31 of the Northern Ireland (Emergency Provisions) Act 1978 as follows:

> "For the purposes of this deed, terrorism shall mean the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear".

30. The Institute maintained an archive which is its principal research resource and consists mainly of published material such as newspaper cuttings and pamphlets (some of which are produced by terrorist organisations), but also some unpublished academic material and some material volunteered to the Institute. The activities of the Institute were:

1. collecting, classifying and analysing information;
2. supplying information and analysis on request;
3. issuing information and analysis to the news media;
4. publishing articles, papers and books;
5. sponsoring public lectures, discussions and conferences;
6. providing a centre for persons engaged in the study of terrorism or in counter-terrorist activity to contact and meet each other;
7. maintaining the archive.

31. At the time we were considering their application for registration, two conferences had been held—the first in July 1987 on the subject Soviet Active Measures and Propaganda in the Gorbachev Era: Analysis and Response; and

the second in April 1988 on the subject The Rule of Law and Control of Terrorism. Four booklets had also been published, two in 1986 entitled "Tamil Terrorism—National or Marxist?" and "ANC—A Soviet Task Force?", another in 1987 entitled "Sendero Luminoso—A New Revolutionary Model?" and a fourth in 1988 entitled "Terrorism in West Germany—The Struggle for What?". The three trustees were all politically committed.

32. It could be contended that the real purpose of the Institute was not revealed by the declaration of trust, and that it was proper to take account of the position and personal interests of the trustees on the basis of the decision in *Bonar Law Memorial Trust v Commissioners of Inland Revenue* [1935] 17 TC 508. However, that was a case where the trust deed did not expressly limit the trusts to exclusively charitable purposes. We agreed that we could not support the view that because a trustee of a charity is active politically he will necessarily import such political activity into the administration of his trust and that consequently the trust could not be charitable on that ground. The law is clear that it is a breach of trust for any trustee to permit personal views and interests to influence him in his administration of his trust. If such a breach of trust occurs then there are mechanisms for restraining or removing the offending trustee. We knew of no principle which permitted us to take a trustee's political or personal views into account in deciding whether an institution of which he is a trustee should be accepted as being established for charitable purposes.

33. It could also be contended that the pamphlets on ANC and Tamil Terrorism were not objective and balanced but represented the personal views of the authors, and that the general style, language and presentation of the booklets suggested that the primary aim was in fact to influence political attitudes. We were agreed that the first conference held by the Institute, and the booklets on the ANC and the Tamils expressed a particular political viewpoint and did not represent totally objective research. However, the second conference and the booklets on the Sendero Luminoso and West German Terrorists were in our view objective. We noted that the earlier conference and booklets were promoted before the proposal to set up a charity was put into effect, by the previous partnership and not by the trustees of the trust established by the deed of 14 January 1988. The trust would be under different management from the original partnership and we took the view that it could not properly be assumed that the trustees would carry out the objects of the trust in the same way as the partnership had pursued their activities, particularly as we had pointed out to the trustees' solicitors that politically slanted research could not properly be carried out under the guise of charitable research. We agreed, therefore, that the Institute should be registered on the basis that its objects were directed to the advancement of education.

34. We have informed the trustees of the Institute that their current objectivity must be maintained and that if they were to revert to the original polemical style adopted before the trust was established they would be committing a breach of trust.

Investigation and Protection of Charitable Property

(a) Generally

35. We are pleased to report that during the year we were able substantially to increase the resources devoted to monitoring and investigation work. Those additional staff have enabled us to call in and examine more accounts on a selective basis, to develop a well targeted and effective monitoring system, and to develop a comprehensive training programme for the staff engaged in our Monitoring and Investigations Divisions. Difficulties of recruitment in our London Office have, however, prevented us from building up the Division as quickly as we should have liked.

36. As we reported in paragraph 31 of our report for 1987 our monitoring unit has concentrated its efforts on examining the activities of those charities which display certain characteristics common to cases in which deliberate abuse is found; and those cases identified at the time of registration as requiring future scrutiny. During the year the unit identified certain other types of charities for close examination and in addition they monitored charities registered in two six-monthly periods. We were successful in obtaining accounts for some 88% of these charities. The most common cause of lack of response to requests for accounts is that the correspondent or the address of the correspondent has changed and we have not been informed. In a small number of cases charities were found no longer to be operating: these have now been removed from the Register. The examination of the accounts received led in a significant number of cases to further inquiries being made and in 21 cases prompted a full investigation.

37. The number and types of complaint received during the year followed the pattern of recent years. For example, of the 616 complaints received in our London Office during the year 33% were concerned with the loss of funds due to maladministration, incompetence, error, inadequate financial control and the like; 20% arose from allegations of deliberate fraud, theft and misappropriation, while 15% were related to fund-raising abuse. The bulk of the remaining cases were concerned with constitutional disputes, personality clashes, and allegations of political activity. During the year our actions have led in these cases to the recovery of just under £100,000 of charitable funds and to the institution of two civil actions for recovery of funds amounting to £1·25 million. The sums of money that had to be restored are but a small part of the charitable assets protected by our intervention. In those cases handled by our London Office for example it was estimated that the property being protected was well over £3 million. Rather than analyse further the nature of the cases in hand, however, we believe that it would be both appropriate and timely in this report to discuss an important matter relating to the powers and duties of trustees which has arisen in our handling of this investigative work during the year.

(b) Conflicts of Interest: Generally

38. Our increasing experience in investigative work particularly in relation to fund-raising and tax avoidance schemes has demonstrated the basic soundness of the rules of trust law which inhibit trustees and others from profiting from those positions. Misunderstandings often arise as to the precise scope of these rules. Their application is not confined to the circumstances where remuneration has been drawn directly from the funds of the charity for services as a trustee or employee of the charity. They also apply where the remuneration has been drawn from the assets of a trading company over which a charity has, through its shareholding, a total or substantial measure of control. They apply where a trustee buys from or sells to the charity property, goods or services. They apply where trust property has been used to further some private objective of a trustee; for example where a decision has been made to invest trust property in his private business enterprise.

39. We shall continue to seek the exclusion from the governing instruments of proposed charities of provisions which would unreasonably modify these rules. The promoters of charities do not have a free hand to make such modifications, even where statute has not imposed any restrictions. Where trusts are being declared by persons who are agents only for the contributors (as will be the case with charities whose funds are provided by members of the public) the scope of the agency will limit the power to modify the said rules. And even where the trusts are being declared by a principal (as will be the case where a settlor is funding a charity himself) any modification of these rules, designed to serve the interests of the trustees rather than to promote efficient administration, would render the institution non-charitable, since such a modification would have, in legal terms, a dispositive effect.

(c) Conflict of Interest: Parent Governors

40. We have also advised on the propriety of parents serving on the governing bodies of charitable independent schools. The booklet "Guidelines for Governors" published jointly by the Association of Governing Bodies of Public Schools and the Association of Governing Bodies of Girls Public Schools advises governors that it could be beneficial to have parents on the governing body of an independent school. It has also been argued in the case of a particular school that the exclusion of parents from the governing body of the Foundation would have a seriously limiting effect on the choice of governors and would exclude two existing co-optative governors who had children attending the schools from continuing to act. There is no doubt, however, that parents with children at an independent school are, along with their children, interested in and derive a benefit from the school and consequently as governors would stand in a position where their duty as trustees might conflict with their interest as parents. Consequently, schools which have governors who have children in the school must always be alive to the possibility that the participation of such governors in some areas of the school's administration may give rise to challenge under the self-dealing rule. Clearly parent governors should not take part in decisions concerning the award of scholarships to, or admissions of, their own children. Discussions about fees and other payments levied upon parents may be another problem area. There might also be pressure from particular parents anxious that money should be spent on introducing, maintaining or improving the teaching of a particular subject which they wished their children to study. We believe, however, that on balance and subject to certain safeguards, the benefits of having parent representation on the governing body outweigh dangers of this sort. In our view, in order to ensure that the business of the charity could be conducted properly the number of parent governors should not normally exceed one-third of the total number of governors for the time being; and that parent governors should not be in a majority at any meeting of the governing body.

Trading by or on Behalf of Charities

(a) Generally

41. The Commissioners last considered this matter in paragraphs 5 to 12 of their report for 1980 and those paragraphs have since been reproduced as part of the Commissioners' leaflet **"Fund Raising and Charities"** (CC20). Having regard to recent changes in the law a further word of caution needs to be sounded.

42. It should be emphasised that a company which has been formed by a charity as a vehicle for the conduct of some trading operation on its behalf does not, simply because the whole or a majority of its shares are owned by the charity, qualify for any privileged taxation treatment. Reliefs from taxation can be available in relation to any profits of the associated trading company which are paid over to the parent charity and are then applied for charitable purposes, but no special reliefs are available in relation to profits which are retained by the trading company in order to finance its ordinary business activities.

43. Arrangements, whether strictly contractual or not, which involve a trading company associated with a charity paying over to the charity (usually with the assistance of a very short term loan from a bank) a greater proportion of its profits than it can commercially afford may be viewed by the Inland Revenue as an artificial attempt to secure a tax advantage. This is particularly the case where, in order to maximise the tax relief obtainable, payments are made on the basis that the charity will immediately make a payment back to the company by way of reinvestment of an appropriate amount to finance its stock of working capital and debtors etc. As such there are several bases on which the tax effectiveness of the arrangements might be challenged. Attention is however particularly drawn to the provisions of section 506 and schedule 20, paragraph 9(1), of the Income and Corporation Taxes Act 1988 under which an

investment made for the purpose of the avoidance of tax by a charity (some improper element of private benefit is not necessary) may be treated as non-qualifying.

44. Existence of this risk reinforces the view which the Commissioners expressed in their 1980 report, that normally funds needed to sustain or expand the activities of an associated trading company should be borrowed from commercial sources. Trustees have a duty to consider the tax effectiveness of the arrangements between them and any associated trading company, and they may be personally liable to account for taxation liabilities which are unnecessarily incurred directly or indirectly as a result of the inefficient administration of the charity. It makes no difference that the liabilities may arise not from the disqualification of the investment made by the charity, but from the disallowance to the associated trading company of corporation tax relief. The associated trading companies are not charities and are not directly subject to our jurisdiction, but we are of course concerned as to the manner in which charity trustees exercise the administrative rights which the ownership of the shares in those companies gives them.

(b) Failure of Trading Companies

45. During the year there were two well-publicised instances where trading companies established to carry out large scale fund-raising on behalf of charities failed financially. One case involved the Search 88 Cancer Trust whose trading company Search 88 Limited was put into liquidation owing over £700,000 and the other involved Sports Aid where Sport for Sports Aid Limited became insolvent owing between £2-£3 million. In both cases the charity trustees and the company promoters followed sound and recommended advice in order to protect the assets of the charity. Although in one case litigation is pending by creditors who claim that they were misled into thinking that they were contracting with the charity and not the company, the assets of charities complying with these procedures should not be at risk.

46. Nevertheless, the practice of raising funds through an associated trading company can give rise to misunderstanding among those supporting the charity and resentment should the trading company run into difficulties. Where assurances have been given that all donations, entrance fees, and sponsorship money would go straight to the charity, there is naturally objection to any suggestion that it should be used to pay off creditors of the trading company. In these circumstances local fund-raisers have on occasions withheld money and donated it to another charity rather than pay it over and risk it being used to pay off the company's debts. This is a mistaken course. Moneys raised for the purposes of a particular charity should be paid over to the charity trustees leaving them to resist the claims of creditors of the trading company if necessary.

47. Representations are, however, also made that where large sums of money can be raised for charity those resources should properly be made available to pay the liabilities legitimately incurred in fund-raising. In particular several creditors have expressed themselves baffled by the situation because they genuinely thought they were dealing with the charity itself and not with a separate trading company. This has led to some adverse criticism in the press with the implication that the use of such a company in some way smacked of sharp practice and the suggestion that tradespeople and contractors could be deterred from dealing with such companies. Fund-raising companies are however set up not only to undertake trading on a scale which would not be proper for a charity, but also to shield the assets of the charity where the venture contains an element of risk. This is particularly the case where publicity and trading expenses are considerable and the return may be uncertain; for example, where reliance is placed on income from sales of memorabilia and sponsorship of promotional expenses.

48. Trustees for their part may feel torn between resisting any claim made by the associated trading company, and meeting what they may feel to be a moral obligation given the close connection between the two bodies, particularly where the collapse of the trading company might rebound to their discredit. To act in such a way, however, would not only be outside the powers of the trustees if the funds were collected on the basis that they will be paid to a charity without deduction of the expenses incurred by the company in raising the funds, but would defeat the whole object of the arrangement. We strongly advise all charities acting closely with an associated fund-raising company to ensure that in all publicity material directed to raising funds and in the contractual relationship of such companies with suppliers, the status of the two bodies is made clear.

Schemes

(a) Generally

49. During the year we made 736 schemes of which 82 provided for the consolidation under common trustees of 338 charities. In order to provide general guidance to trustees about the scheme-making procedure, and to reduce the amount of time we spend on explaining it, we have produced a leaflet called **"Making a Scheme"** CC36 (reproduced at Appendix C).

(b) Cy près Schemes

50. The Woodfield Report questioned whether, in exercising our powers to make cy près schemes, we were wholly consistent and whether some initiatives had been abandoned because of uncertainty about the law or its application. The Report recommended that we analyse and review the legal basis and application of the cy près doctrine and report to the Home Secretary whether we believed legislative change was required. We have consulted widely among Government Departments, local authority associations, organisations working with charities, charities themselves and charity law practitioners. We have taken particular note of experience in New Zealand where legislation on this matter has brought about no radical change. As a result of our review, we have reported to the Home Secretary that in our opinion legislation is unnecessary.

51. The cy près doctrine is a simple and flexible concept which enables the courts and ourselves to prescribe new purposes for a charity when the existing trusts become difficult or incapable of execution. In determining the new purposes to be prescribed we have followed the courts in adopting what we hope are sensible solutions which seek to identify new purposes which are as close as is practicably possible to the existing trusts. The circumstances in which it may be necessary to prescribe a new outlet for a charity's property have been formulated in section 13(1) of the Charities Act 1960 and are wide enough for any reasonable impracticability in the purposes of a charity to be brought within their ambit. As a result, property devoted to charitable purposes is protected from generation to generation and its relevance to changing circumstances preserved.

52. Although we seek to ensure that the doctrine of cy près is applied in any particular case as flexibly and sensibly as possible, we have examined carefully our practices in the light of the views expressed in the Woodfield Report.

53. The inherent flexibility of the cy près doctrine enables the particular problems and circumstances of an individual case to be respected, but this does militate against the formulation and application of an universally applicable set of rules or precedents. It is not altogether surprising, therefore, that as the circumstances of individual charities and their areas of benefit differ (albeit that their purposes may be similar), absolute uniformity of approach is neither achievable nor desirable. Equally, it is not always open to us to accede to trustees' suggestions in a particular case, either because the occasion for altering the purposes of the charity has not arisen or because the trustees' preferred solution is contrary to any reasoned application of the cy près

doctrine. It is not, for example, possible to redirect the funds of a charity simply because the trustees would like to use them for some worthy but quite different purpose; nor is it possible to divert funds to a purpose completely foreign to the purpose for which the charity was originally founded. In such circumstances we may well seem to be inflexible.

54. Nevertheless, we are anxious to ensure that we have not erected artificial rules around our application of the cy près doctrine in such a way as to curtail the scope and effectiveness of its application. Although no formal evidence was put to us to substantiate the expressions of dissatisfaction recorded in the Woodfield Report, we have thought it right to review the framework in which our staff consider proposals for cy près applications and to ensure that any misconceptions which may exist are removed. We are therefore reviewing our precedent systems and the guidance given to staff, to encourage and achieve a more flexible and imaginative approach. In this our aim is to ensure that charitable property is used and applied as effectively as practicable within the spirit of the donor's gift.

55. In the following paragraphs we describe the events which have led to a dramatic change in the circumstances of a charity leading to the need for the making of a cy près scheme. The case also illustrates the way in which we exercise our powers to give consent to the sale of land and is of interest in relation to the identity of persons who may be joined in charitable proceedings before the courts.

(c) The Hampton Fuel Allotment Charity

56. The Hampton Fuel Allotment Charity was created by an Inclosure Award dated in 1826, but is now governed by a scheme of the Commissioners of 26 August 1981. Under that scheme the income of the charity is applicable in relieving either generally or individually persons resident in the area of the ancient town of Hampton, Middlesex, who are in conditions of need, hardship or distress. Until recently, the principal asset of the charity was 10.4 acres of land in Hampton, subject to a lease for 15 years from 29 August 1979, providing an annual income of £5,500.

57. In 1982 the trustees agreed in principle to sell the land to Sainsbury's for £3 million subject to the grant of outline planning permission before 15 November 1984. The application for planning permission was initially refused but after reference to the Secretary of State and to the High Court, the Court in October 1987 upheld the decision of the Secretary of State to grant such permission.

58. In the meantime, before the outcome of the planning application was known, the trustees had renegotiated the terms of their agreement with Sainsbury's and consented to the assignment of the leasehold interest in the land, despite legal advice to the contrary, to Sainsbury's. The Council of the London Borough of Richmond and the two trustees appointed by the Council took the view that it was against the interests of the charity to conclude these matters in advance of the grant of planning permission, on the basis that such planning permission would result in an increase in the value of the land and therefore place the charity in a better bargaining position. We agreed with this view and withheld our consent to a sale on the terms then negotiated.

59. In July 1987 Richmond Council sought an order under section 28 of the Charities Act 1960 authorising the Council and the two trustees it had appointed to commence legal proceedings in the High Court seeking a review of the proposed arrangements for the sale of the land and clarification of the legal position as regards the assignment of the leasehold interest to Sainsbury's and the consent for that assignment. We made the necessary order on 30 September 1987.

60. Before these substantive issues were tried a question was raised whether the original Council had any standing to be a party to the proceedings. The

answer turned on the meaning of "any person interested in the charity" under section 28 of the Act of 1960. Mr Justice Knox at first instance held that the Council was not a person interested in the charity and should therefore be struck out as plaintiff, leaving only the two trustees to continue. On appeal to the Court of Appeal, this decision was reversed. In his judgment, Mr Justice Nicholls took the view that the phrase "any person interested in the charity" could not, and should not, be defined precisely, and it was not sufficient to apply the test laid down in the case of *Bradshaw v University College of Wales* (Appendix D(c) of our report for 1987) or to regard it as essential that the person interested should have a direct involvement in the management of the charity as Mr Justice Knox had held. Instead, he adopted the words used in *Haslemere Estates Limited v Baker* (page 43, paragraph (d) of our report for 1982) that a person interested in a charity must have "some good reason for seeking to enforce the trusts of a charity or to secure its due administration". Richmond Council in the Court's view had a substantially greater interest in the charity than ordinary members of the public. The main reason for this was that the function of a local authority, particularly in providing facilities for the elderly or disabled or for children, went hand in hand with the function of the charity in relieving need in the area. The fact that the income was certain to increase substantially was also a relevant factor. Accordingly it seemed to the Court that the Council had good reason for securing the due administration of the trusts, even though the income of the charity could not be used directly in relief of rates. The Council was thus entitled to be a plaintiff in the proceedings.

61. Mr Justice Nicholls went on to point out that not every local authority would have standing as a plaintiff in proceedings concerning a local charity in its area. Each case would have to be considered in the light of the relevant facts.

62. Mr Justice Knox gave judgment on the substantive matters on 27 May 1988. The specific relief sought by Richmond Council and two of the trustees was refused, but the terms on which the land was to be disposed of were directed to be determined separately by the Court after further bids from interested persons, and the relevant evidence had been received. The Court, by an Order dated 22 October 1988 authorised the sale of the land to Sainsbury's for £21 million. In view of the very considerable increase in the charity's income which will result from this transaction we have accepted an application from the trustees for a scheme to widen the purposes of the charity.

(d) Almshouse Maintenance Contributions

63. The Woodfield Report noted that the requirement in our schemes that we approve increases in the level of weekly maintenance contributions, generates a large volume of routine and possibly unnecessary work. We have therefore considered the extent to which we should continue to be concerned with approving increases in the level of contributions made by almshouse residents towards the cost of maintaining their accommodation and the essential services in it.

64. We have concluded that while we could not withdraw completely from this work without the assistance of legislation, it is possible to take significant steps to reduce substantially the amount of staff time presently devoted to it. With the agreement of the National Association of Almshouses we decided that instead of approving each and every increase in contributions we should authorise the adoption of a formula within which the amount of the contribution will be determined. After approval has been given to the adoption of such a formula, it will be for the trustees themselves to determine from time to time the amount of the contributions having taken into account other sources of income available to them and the need to ensure that no resident suffers hardship. In some cases we may continue to exercise closer oversight but we hope that the need to do so will be rare. We anticipate that the necessary administrative arrangements will be in place to have enabled us to adopt the new procedure by Spring 1989.

(e) Almshouses: Standards of Management

65. We are pleased to endorse the recommended Standards of Almshouse Management published early in 1989 by the National Association of Almshouses. The report describes the trustees' duties and responsibilities, details of statutory requirements placed on almshouse trustees (for example in dealing with land and in drawing up accounts), provides guidance on the selection, appointment and welfare of residents of almshouses, as well as recommending steps to be taken in maintaining, improving and developing almshouses themselves. The Report reproduces our model scheme which provides the legal framework for the administration of almshouse charities, and includes a highly useful handbook for residents. Copies of the Report may be obtained from the National Association of Almshouses, Billingbear Lodge, Wokingham, Berks RG11 5RU at £5.00 a copy.

(f) Section 19 Scheme: The University of Liverpool

66. The trust funds of Liverpool University were subject to the provisions of the Liverpool University Act 1931. Section 2 of the 1931 Act consolidated certain investments and moneys of existing trust funds of the University into a single fund called The University Fund to which, subject to certain limited exceptions, all gifts of the University were required to be contributed, whether or not they were subject to a trust for investment and whether they were held for the general purposes of the University or for some particular purpose or purposes.

67. Although the University Fund was still capable of being operated in the manner prescribed by the 1931 Act, some features of the Act were considered by the University authorities to have undesirable consequences. For instance, we had made a scheme under section 22 of the Charities Act 1960 establishing a common investment fund to which charities administered by the University might contribute their funds. Unless the provisions of the 1931 Act were amended, the University would have to take complicated steps to ensure that future donations and bequests to the University were not caught by the Act and therefore excluded from the common investment fund. We therefore agreed to establish a scheme modifying the provisions of the 1931 Act by providing that subject to any contrary indication by the donor, future gifts to the University should be excluded from the provisions of the 1931 Act. By modifying the 1931 Act in this way, future gifts to the University would be added to the University Fund only where the donor of the gift had expressly stipulated that the gift was to form part of the University Fund.

68. As the scheme would alter the provisions contained in a Private Act of Parliament, it was necessary for us to proceed by means of a scheme under section 19 of the Charities Act 1960. The scheme was brought into effect by the Charities (University of Liverpool) Order 1988 which came into force on 4 July 1988.

Dealings in Land

(a) Generally

69. During the year we made 2,645 orders relating to land transactions. We made 662 orders authorising charity trustees to sell property; 528 orders authorising purchases, leases, exchanges, easements etc; 274 orders authorising trustees to borrow on the security of charity property; and 55 orders authorising trustees to release rentcharges. We continued our practice, described in paragraphs 52 and 53 of our report for 1987, of excepting certain charities from the need to obtain our authority to sell land, and in excepting certain specific transactions where trustees can certify that they have followed particular procedures. In total we made a further 65 general excepting orders and 1,061 orders excepting specific property transactions. We have, with advantage, continued to rely on a second opinion from the District Valuer's Office on the price agreed for a transaction where, in the absence of full

marketing of the property, we feel some doubt about the true value. We believe the system is working well and that such consultation causes little undue delay. Some 217 cases were referred to the District Valuer's Office in 1988 for confirmatory valuations.

70. The property market, particularly in domestic housing, was strong throughout most of the year, with the sharp rise in property values previously seen in London and the South East in the earlier part of the year later reflected in most other parts of the country. High interest rates and changes in tax relief on mortgages towards the end of the year did, however, slow the market perceptibly. The extended use of excepting orders has enabled us to deal with the work arising from this buoyant market notwithstanding a further decrease during the year of 9% of the staff assigned to this work following their redeployment to deal with other aspects of our work.

71. It is noticeable that the use of an excepting order does not necessarily bring about any lessening of our involvement, particularly where, as in the case of open spaces and recreation grounds, the proposed sale is strongly resisted locally. Moreover, we detect increasing pressure on charity trustees, when they are disposing of surplus land or buildings, to make them available for socially useful purposes which are outside the scope of the trusts on which it is held. By refusing to sell to an organisation established to promote a worthy local cause at less than full market value, the trustees are often perceived as acting contrary to the public interest and in an "uncharitable" manner. In wishing to contribute to the social well-being of their community, trustees may themselves wish to influence the future use of the property. It is also often the case that in many areas local opinion is opposed in principle to a sale to a developer. Such a situation is made more difficult where the land is of considerable value and local community groups have little prospect of acquiring it on the open market.

72. Trustees must, however, administer their charity in accordance with its trusts and exclusively for its own purposes and beneficiaries. They are not legally free to operate a charity in their care for purposes outside its declared trusts. Nor can they sell charity property at less than the full market value unless such a sale directly furthers the charity's own purposes. To do otherwise is effectively to appropriate that part of the property of the charity represented by the difference between the market price and the sale price for a purpose outside the charity's trusts. Trustees must act reasonably and prudently, setting aside any personal views and any wider interests, in all matters relating to the charity and must exercise the same degree of care as a prudent man would do in conducting his own affairs. The law does not allow them a free hand in disposing of land and they do not have the absolute discretion of a beneficial owner. In short they must take all reasonable steps to secure the best and most advantageous terms in the interests of their charity alone.

(b) Investment in Land

73. The Woodfield Report recommended that the Trustee Investments Act 1961 should be amended to allow charity trustees to purchase land for investment purposes without the need for an order of the Commissioners under section 23 of the Charities Act 1960. The intention of the recommendation can to some extent be met if we use our powers under section 23 of the 1960 Act to give certain charity trustees a general authority to invest in land.

74. Consequently, we are now willing to confer on the trustees of certain charities, not having an express power to invest in land or not able to exercise the statutory power to reinvest in land the proceeds of sale of land, a general authority to apply capital in the purchase of freehold land in England and Wales as an investment. Authority will be given on condition that trustees first obtain advice from a qualified surveyor recommending on the terms proposed the purchase of the land in question as an investment for the charity. The charities in respect of which we would make such as order are:

(a) charities which have traditionally held land as an investment and whose trustees, we have reason to believe, are sufficiently well informed or well advised that we can be reasonably certain that they will obtain suitable advice on proposed transactions and will know how to maintain and manage their investment property; and

(b) charities which may not have a tradition of holding land but which have a sufficiently large and diversified portfolio of investments to justify investment in land as a reasonable extension of the trustees' investment powers; and in respect of which we are satisfied that suitable investment advice will be obtained.

75. Before an order under section 23 can be made there must be an actual proposal by a charity to acquire land. Once such a proposal is made it is open to us to give a general authority to cover future acquisitions as well. Such an order cannot be made, however, where the trusts of a charity or an Act of Parliament expressly prohibit the transaction (section 23(5) of the 1960 Act).

(c) Urgent Sales by Discontinued Denominational Voluntary Schools

76. For many years we have had an arrangement with the Department of Education and Science and the Welsh Office under which we have been willing to authorise urgent sales or other dispositions of property belonging to discontinued denominational voluntary schools (in practice mostly Church of England schools), notwithstanding that they are eligible for inclusion in an order under section 2 of the Education Act 1973, provided that in each case the Secretary of State had received an application for and had confirmed that he would make such an order to deal with the application of the proceeds of sale. Although the Secretary of State has power to authorise a sale or other disposition in a section 2 order, this arrangement was entered into because of the Department's practice of not dealing with cases on an individual basis. Instead, it has been the Department's practice to make such orders on a diocesan basis covering all the denominational educational endowments known at the time to be eligible for inclusion. This could result in some charities having to wait several years for an order.

77. Early in 1988 the Department of Education and Science advised us that they were proposing to change their procedures and that, in particular, they would be prepared to make an order for a single school where, for example, a sale was urgent. Having regard to these proposals and bearing in mind the recommendation in the Woodfield Report that we should make every effort to reduce the resources that we currently deploy on consents work, we decided that there was no pressing need for us to undertake to make sale orders in cases which were primarily the responsibility of another Government Department. Consequently, we notified the Department of Education and Science and the Welsh Office that we would terminate the arrangement after 31 July 1988. Any relevant sale or other disposition now falls to be authorised by the appropriate Secretary of State.

(d) Reverter of Sites Act 1987

78. In Appendix C of our report for 1987 we described the provisions of the Reverter of Sites Act 1987. The Act was intended to facilitate the management and sale of land originally conveyed for use for certain particular purposes (in particular, schools, places of worship and literary and scientific institutions) but which was subject to a statutory right of reverter on those purposes ceasing to be carried out. We have, however, encountered certain difficulties in applying the provisions of the Act.

79. Briefly, the 1987 Act provides, with retrospective effect, that the persons in whom the land was vested immediately before the reverter would have occurred will, when the occasion for reverter arises, hold the land upon a statutory trust for sale for the benefit of the reversioner. In most instances the original conveyance will have created a charitable trust, but the trust for sale will usually be a non-charitable one for the benefit of the person who would,

before the 1987 Act, have enjoyed the benefit of the reverter, and as such will therefore be outside our jurisdiction save in respect of a scheme which we might make under section 2 of the 1987 Act.

80. Section 1(4) and (5) of the 1987 Act makes special provision for cases where reverter has occurred, but the claim of the person who would otherwise be entitled as a beneficiary of the statutory trust for sale was statute barred, before the Act came into force. In such cases, the Act confers no right on that person as a beneficiary of the trust for sale.

81. In our view, one possible construction of section 1(5) is that the principles enunciated in *Re Ingleton* [1956] Ch 585 may still apply with the effect that the trustees will hold the land upon the charitable trusts declared free from the reverter provisions. However, as the trustees' title derives from section 1 of the Act which vests the land in them on the trust arising under this section, it might be argued that they could not acquire adverse possession contrary to their trust. Another construction may, therefore, be possible; namely, that the land is held on a resulting trust for the estate of the person who originally conveyed it. This construction is on the basis that a settlement of property under a statute providing for reverter on the cessor of its use for charitable purposes indicates that the property was not a perpetual gift to charity but only the dedication of it for a limited period and purpose: see for instance *Re Cooper's Conveyance Trusts* [1956] 3 All ER 28. Unfortunately the Act does not resolve the question.

82. This uncertainty may be resolvable only by a decision of the courts or by amending legislation. In the meantime the uncertainty gives rise to practical difficulties—not the least in deciding whether an order of the Commissioners is needed to authorise a sale of the property. To assist we shall be prepared to make an order "tam valeat" authorising the sale to cover the situation should it be finally determined that a charitable trust does exist.

83. The provisions of section 1 of the Act also apply to the Official Custodian for Charities where the land has been vested in him. In so far as the provisions require him to hold property which is not held in trust for a charity and to hold such land as a trustee for sale and not a custodian trustee they conflict with the statutory position of the Official Custodian as laid down in sections 3 and 17 of the Charities Act 1960. In our view the Official Custodian cannot nor should be placed in a position where he may be required to manage land which is not held upon charitable trust and be open to a potential charge for any loss which might occur whilst the land is vested in him. The Official Custodian has no management role in respect of charity land and consequently has no expertise in the management of land. We therefore consider the situation arising under the Reverter of Sites Act to be wholly unsatisfactory. We will not in future vest land in the Official Custodian if it is subject to statutory reverter provisions which might be affected by the 1987 Act.

The Official Custodian for Charities

84. The financial report of the Official Custodian for the year is set out in Appendix D.

85. In paragraphs 57 to 63 of our report for 1987 we provided details of the initial steps taken to implement the recommendations made in the Woodfield Report about the services of the Official Custodian. At the time of writing the 1987 report we awaited the outcome of a further study being undertaken by Touche Ross into the feasibility of running the Official Custodian's operation on a self-financing basis. In their further report in March 1988, Touche Ross considered various cost-saving measures and means of raising revenue, including the possible introduction of a system of charging charities for the

for the services provided, but concluded that it would be unrealistic to expect that the Official Custodian would be able to recoup his running costs.

86. In the light of the Consultants' reports the Government announced on 23 November 1988, in answer to a written Parliamentary Question, that the continuance of the Official Custodian's investment services could no longer be justified and would be discontinued. The office of the Official Custodian will be retained and there are no plans to abolish his function in relation to charity land. The decision reflects the thrust of the Woodfield proposals: charity trustees should be stimulated to take direct responsibility for their investments and resources should accordingly be redirected from the Official Custodian's investment services to supervisory work, particularly in view of the considerable proportion of our resources needed to sustain his services.

87. Legislation will be needed to divest the Official Custodian of his investments. In the meanwhile we are drawing up detailed plans to enable divestment to take place once the appropriate legislation has been passed. We are particularly anxious that the opportunity presented by the divestment programme should be used to review holdings of unsuitable stocks and that for the smaller charities the divestment exercise should be conducted in association with local charity reviews. Until legislation enables the process of divestment to start the Official Custodian will continue to provide a full service for those charities whose property is held in his name.

88. Nevertheless, in order to facilitate the eventual complex task of winding up his operations, we have reviewed the Official Custodian's current functions and have introduced some minor restrictions to his services. In those cases where there is no legal requirement for a charity's property to be held by the Official Custodian we will no longer accept a transfer of existing investments or cash into his name. Nor will we accept, from any charity, certain types of deposits (including local authority bonds and temporary loans, National Savings Bank investment accounts and deposit bonds, and building society deposits).

The Charities Official Investment Fund

89. In their 1988 Report the Trustees refer to the exceptionally strong economic growth of about 4½% shown by OECD economies. They note the strong expansion of the UK economy resulting in a substantial budget surplus and higher corporate profits; but that a growing balance of trade deficit and inflation rate had given rise to a sharp increase in UK interest rates. The Income Shares, after rising in the first half of the year by almost 10% fell back in the second half to 422.96p at 31 December 1988, an increase for the year of 6.6%. The dividend was increased in the year by 11.5% from 20.9p to 23.30p per share and yield at the year end was 5.5%. Over the past five years, the Income Share value has risen by 12.0% per annum and the dividend by 10.7% per annum compared with the average annual rise in the retail price index of 5.0%. The Accumulation Share value increased by 11.7% to 1349.82 at 31 December 1988. Over the past five years the Accumulation Share value has risen by 16.0% per annum representing more than a doubling in value.

The Charities Deposit Fund

90. The Trustees have reported 60% growth in the Fund during 1988 with deposits by charities totalling over £100m in 3898 accounts. The average

interest rate paid by the Fund during the year was 9.45% (compounded annual rate, 9.78%), which was higher than rates paid by comparable commercial market money funds throughout the period.

Location

91. The steady increase in our staff complement over the year to cope with the additional burden of work associated with the Woodfield programme of reforms is beginning to place a considerable strain on our London office accommodation. This, together with the longstanding difficulty of coping with high rates of staff turnover in central London and the high cost of office space, prompted us to consider the advantages of transferring work from London to another part of the country.

92. At present, the London office deals principally with work relating to charities which have their headquarters in the Greater London area and charities located in the southern counties (mainly the South East, South West and East Anglia); and we are currently examining the possibility of transferring the latter work—relating to the southern counties—out of London.

93. The post-Woodfield emphasis on strengthening public confidence in charities will, however, call for a greater effort on our part in establishing and maintaining contacts with trustees, local authority and voluntary agencies, representative bodies, and local police forces, and we are conscious of the fact that placing ourselves at too great a geographical distance from the charities we serve could prove counter-productive to this initiative.

94. On balance, bearing in mind the continuing difficulties over recruiting and retaining staff not just in London, but in the South East generally, the strategy which commends itself to us is, subject to financial appraisal, to establish a regional office in South West England or South Wales.

Charities Act 1985

95. The response in 1988 to the provisions of sections 2 and 3 of the 1985 Act enabling trustees to modernise their objects and to amalgamte with other charities has again been modest. During the year we received 214 resolutions made under the Act; of these 22 were made under section 2 for the amendment of objects and 169 under section 3 for the transfer of property to another charity. Following action by trustees under section 4 of the Act to spend capital as income, we removed 23 charities from the Register as having ceased to exist.

The Cost of Commission and Financial Control

96. The cost of the Commission for the financial year 1988–89 was estimated to be £7,183,000 of which £6,960,000 was for wages and salaries and other administrative expenses, and £223,000 was for capital costs.

97. Work has been in progress for the last three years on the development of better internal systems of financial and management control, both to promote cost-effective and efficient resource management within the Department, and to enable our bids for Exchequer funding to be underpinned by more detailed statistical evidence of results achieved year by year. Added impetus to these efforts has been given by the Woodfield recommendation that we should accord particular priority to the introduction of a management information system.

98. At its present stage of evolution, our management information system requires divisional management to report formally and periodically to the Board of Management on the extent to which divisional objectives have been met within pre-arranged time scales and resource limits. The analysis of this information enables the Board to monitor standards, review progress, ensure value for money, assess resource needs, refine policy and develop strategic planning.

99. Our financial control system, which is operated separately from, but runs parallel to, the management information system, is designed to improve the effectiveness of planning, monitoring and controlling departmental expenditure. An integral part of the system is the concept of delegated budgetary control, whereby certain senior members of staff are designated as budget holders and are given full responsibility for the management and control of funds within a defined area of spending. A microcomputer system has been developed internally to support all aspects of financial control.

Appendix A

(Paragraph 11)

LEGAL DECISIONS AFFECTING CHARITIES

(a) Attorney General V Cocke and Another [1988] 2 All ER 391

This case involved consideration of whether the Attorney General could be statute barred under section 21(3) of the Limitation Act 1980 when taking proceedings for the enforcement of a charitable trust for the benefit of the public.

The defendants in this action were appointed executors and trustees under a will which created a charitable trust for the public benefit in connection with the collection of ceramics, paintings, prints and drawings assembled by the testator. The will was proved by the defendants in 1951. After a period of nearly thirty five years the Attorney General brought an action by writ against the defendants for inter alia,

(i) accounts and inquiries to be taken in relation to the testators' estate;

(ii) injunctions restraining disposition of the assets held on the charitable trusts; and

(iii) the appointment of new trustees in place of the defendants.

The writ contained no allegation of breach of trust and made no claim for the payment of money or recovery of assets. The second defendant applied to have the order discharged on the basis that the Attorney General's claim was statute barred under section 21(3) of the Limitation Act 1980. The application was dismissed and the second defendant appealed.

Section 21(3) provides:

> "Subject to the preceding provisions of this section, an action by a beneficiary to recover trust property or in respect of any breach of trust. . . . shall not be brought after the expiration of six years from the date on which the right of action accrued. For the purposes of this subsection, the right of action shall not be treated as having accrued to any beneficiary entitled to the future interest in the trust property until the interest fell into possession".

Mr Justice Harman concluded that section 21(3) had no application to an action brought by the Attorney General to enforce a charitable trust for the benefit of the public at large on two grounds. First the action was brought by the Attorney General and not by a "beneficiary". There could be no individual beneficiaries under a public charitable trust and no persons in whom property rights could vest under the trust and who, as such, could claim any specific benefit. Secondly the action was not brought "to recover trust property or in respect of any breach of trust", since the claim was purely for an account which was based on a fiduciary relationship and which did necessarily involve impropriety.

Consequently the Attorney General's action for an account was not statute barred under section 21(3) and the appeal was dismissed.

(b) Hetherington's Will Trusts

This case concerned gifts for masses for the repose of the soul of the testatrix and whether or not these gifts were charitable.

Gibbs v McDonnell and HM Attorney General (Unreported)

Mrs Hetherington died on the 1 May 1984 having made a holograph will dated the 17 November 1980, in which she left, inter alia "£2,000 to the Roman Catholic Church Bishop of Westminster for masses for the repose of the souls

of my husband and my parents and my sisters and also myself when I die" and the residue of her estate to "the Roman Catholic Church, St Edwards, Golders Green for masses for my soul". No executor was appointed.

Proceedings were brought by the Director of Administration and Financial Secretary of the Roman Catholic Diocese of Westminster, the administrator of the estate, to determine whether the gifts were valid outright gifts to the Church, or gifts subject to a condition, or gifts imposing valid charitable trusts.

Sir Nicolas Browne-Wilkinson, the Vice Chancellor, in his judgment given on the 23 January 1989, upheld the bequests as valid charitable trusts for the saying of masses in public.

The Vice Chancellor considered the authorities and in particular the doubt cast by the House of Lords in *Gilmour v Coats* [1949] AC 426 upon the case of *Re Caus* [1939] Ch 162 in which Luxmoore J held that a gift for masses was charitable and did not therefore infringe the rule against perpetuities.

He set out the following principles established by the cases:

(i) trusts for the advancement of religion were prima facie charitable and assumed to be for the public benefit, although this could be rebutted by evidence showing that in fact the particular trust in question cannot operate so as to confer a legally recognised benefit on the public;

(ii) the celebration of a religious rite in public does confer a sufficient element of public benefit because of the edifying and improving effect of such celebrations on members of the public who attend;

(iii) the celebration of a religious rite in private does not contain the necessary element of public benefit since any benefit by prayer or example is incapable of proof in the legal sense, and any element of edification is limited to a private, not public, class of those present at the celebration;

(iv) where a gift for a religious purpose could be carried out in a way which is beneficial to the public but could also be carried out in a way which would not have a sufficient element of public benefit, the gift should be construed so as to be carried out only by charitable methods, all non-charitable methods being excluded.

In view of the evidence that had been given in the case which established the public nature of the masses and the assistance of the endowment of the priests who perform the ceremonies, the Vice Chancellor declared both gifts to be valid charitable trusts for the saying of masses in public.

The pecuniary legacy would be paid to the Archbishop of Westminster, who was plainly the person referred to as the Bishop of Westminster, to be held by him on those trusts. As the will appointed no trustee of the residuary gift, that would be dealt with by the Crown under a scheme made under the Sign Manual.

(c) Mills and Others v The Winchester Diocesan Board of Finance, the Charity Commissioners and the Attorney General

This case raised the question whether an action for damages can be brought against the Charity Commissioners for advice given in exercise of their statutory functions under section 24 of the Charities Act 1960, if that advice is not only wrong but given negligently, and thereby loss is involved to potential objects of the trusts. The court did not decide that wrong advice had been given.

In two actions started by Writ respectively on 7 April and 17 June 1988 brought by four local inhabitants of the Parish of Upton Grey against the Winchester Diocesan Board of Finance, the Attorney General and the Charity

Commissioners arising out of the closure of a local charitable school of which the Board of Finance is trustee the Plaintiffs sought:

(a) in the first action certain declarations as to the proper construction of a conveyance dated 28 January 1942 which regulates the charity's affairs as well as a declaration that the opinion and advice given by the Commissioners about the matter was erroneous and that the Commissioners should bear the costs of the proceedings;

(b) in the second action to resolve further questions about the proper meaning of the 1942 deed, as to whether a cy près scheme could have been made and in addition claim damages for negligence against the Commissioners arising out of the advice they had given on the matter.

In the first action on 13 June 1988 the Master ordered that the Charity Commissioners should cease to be parties to the action and that the relief sought as to the nature of their advice and the payment of costs be struck out of the Statements of Claim. Similarly in the second action on 19 October the Master also ordered that the Commissioners should cease to be parties in that action on the grounds that having regard to the relief sought against the Board of Finance and the Attorney General and to section 24(2) of the Charities Act 1960 the Commissioners had improperly been made parties. The plaintiffs appealed against both Orders.

On appeal the case before the Court was therefore whether the Commissioners were proper parties to these actions in relation to the three questions that were raised in them. Mr Justice Knox held:

(a) *on the questions of construction* that no arguments were put forward that the Commissioners were proper parties to such questions and that their joinder was contrary to the long settled practice of the courts. It would merely engender additional costs without any corresponding benefit to the charity and that it would therefore be plainly wrong for them to be joined in relation to these claims;

(b) *on the question of costs* that the position was equally clear. It was only proper to join a party as a defendant if the plaintiff seeks to assert a legal right against the defendant. There was no right to costs save as an adjunct to the resolution of the proceedings in question. Although in some highly exceptional cases the Court may order costs against a person who was not a party, no such exceptional case was pleaded in either action;

(c) *on the question of negligence* and whether an action for damages can be brought against the Commissioners for advice given under section 24 of the Charities Act 1960 if that advice is not only wrong but given negligently and thereby loss is suffered by potential objects of the trust. The Court doubted that there was sufficient proximity between a potential object of a charity and the Commissioners to satisfy the first stage in the two stage test derived from Lord Wilberforce's judgment in *Anns v Merton London Borough Council* [1978] AC 728 at 751–2 and therefore doubted whether a duty of care did exist.

However, whether or not such a prima facie duty existed, Mr Justice Knox thought it clear that there were considerations which would negative the existence of a duty of care owed to the potential objects of a charity by the Charity Commissioners breach of which, if coupled with damage, gives rise to a right to damages for common law negligence. Those considerations were:

(1) first and foremost, that the statutory scheme of the Charities Act 1960 confers an effective right of appeal against any action proposed to be taken on the basis of advice given by the Commissioners which was

claimed to be erroneous. The remedy was there in section 28 and was being exercised in these actions by the questions of construction being brought before the court;

(2) secondly, that the concurrent exercise of rights in negligence at common law and of rights of appeal in charity proceedings could only multiply legal costs to the probable detriment of the charity concerned. There could otherwise be a simultaneous action under both heads which would be an unfortunate state of affairs;

(3) thirdly, it would be contrary to the general good of charities for the Commissioners' decisions also to be liable to attack by so wide a class of persons as the potential objects of a charity;

(4) fourthly, and least significantly, and not by itself conclusive, there was no authority cited to the court for such an action since the Commissioners were established in 1853.

The Court accordingly, whilst accepting that the Commissioners had to be careful in giving advice under section 24, dismissed both appeals.

Appendix B

(Paragraph 11)

LEGISLATION AFFECTING CHARITIES

(a)Local Government Finance Act 1988

This Act provides for a new system for financing local government and, among other things, abolishes rates on domestic property, and introduces a community charge (commonly referred to as the poll tax) for most individuals aged 18 or over and a new national non-domestic rate. The community charges and the new national non-domestic rate will be introduced in England and Wales on 1 April 1990.

The Act provides for a mandatory 80% reduction in the new rates for charities and exempts certain groups of people, some of whom may be occupants of charity premises, from the new community charge.

The Act establishes three types of community charge—the personal community charge, the standard community charge and the collective community charge. The personal community charge is to be paid by all those who are aged 18 or over and solely or mainly resident in an area unless they are exempt. The amount of the personal community charge will be set by charging authorities on or before 1 April each year. Those who are exempt include the following:

(a) the severely mentally impaired;

(b) members of religious communities who have no income or capital of their own and are dependent on the community concerned for their material needs;

(c) those solely or mainly resident in National Health Service hospitals;

(d) those solely or mainly resident in residential care homes, nursing homes, mental nursing homes or hostels and receiving care or treatment (or both) in the homes or hostels;

(e) volunteer care workers;

(f) the homeless.

The standard community charge is to be paid by the owner or, where it is let on a lease for more than six months, the leaseholder of a house in which no-one has sole or main residence. The standard community charge will be expressed as a multiple of the personal community charge for the area and will be payable in respect of such properties as a second home which is not the charge-payer's sole or main residence, a holiday cottage, a company flat which is not a sole or main residence, or an unoccupied domestic property. The collective community charge is to be payable by the "landlord" of those domestic properties designated by the community charges registration officer as places which people make their main residence for short periods. This provision is intended to apply to houses, probably in multiple occupation, where the personal community charge would be difficult to operate. Those living in the property will pay collective community charge contributions to the landlord. The amount payable by the landlord will be determined on a daily basis by multiplying the number of people living in the property who would otherwise be liable for the personal community charge by the personal community charge for the area. The landlord will be required to pass these amounts to the local authority but will be entitled to keep 5% of the amount payable as a fee.

The Act amends the Social Security Act 1986 to enable all those who are subject to a personal community charge or liable to pay collective community charge contributions, to apply to their local authority for community charge benefit, with the sole exception of those students who pay only 20% of the charge. The maximum benefit will be 80% of the community charge.

The Act also provides for the continuation of the present system of non-domestic rating and for the introduction of the new national non-domestic rate (to replace the local rate now set by each local authority) in England and, separately, in Wales and for the pooling and redistribution of non-domestic rate income. For charities there will be a mandatory 80% reduction in the local rate bill calculated and charging authorities will be permitted to increase the relief for charities up to 100%. Non-domestic property exempt from local rating includes agricultural land and buildings, places of religious worship, church administrative and ancillary buildings and church halls and property used for the disabled.

(b)Education Reform Act 1988

This Act brings about the most comprehensive changes to the educational system in England and Wales since the Education Act 1944. It includes provisions for the introduction of a National Curriculum for every maintained school, for the teaching of religious education in schools, for the admission of pupils to county and voluntary schools, and for the delegation to the governing body of a school of the management of funds allocated to it by the local education authority.

Of particular interest is Part I, Chapter IV of the Act which sets out the procedures by which any county or voluntary school, subject to certain exceptions, may seek to become a grant-maintained school. Subject to the outcome of a ballot of parents of pupils registered at a school, the governing body of the school must give publicity to the proposals. If the proposals are approved by the Secretary of State then, on a specified date, the school ceases to be maintained by the local education authority and receives funding by way of grants direct from the Secretary of State. The Act contains detailed provisions for the constitution and powers of the governing body of a grant-maintained school and for the conduct of the school. A grant-maintained school will be an exempt charity for the purposes of the Charities Act 1960.

Section 105 of the Act empowers the Secretary of State to enter into an agreement with any person under which that person undertakes to establish and maintain and to carry on or provide for the carrying on of an independent school to be known either as a city technology college or a city college for the technology of the arts, and under which the Secretary of State agrees to make

payments to that person in consideration of those undertakings. In each case such a school must be situated in an urban area and provide education for pupils of different abilities who are between the ages of 11 and 18 and who are wholly or mainly drawn from the area in which the school is situated. The school must have a broad curriculum with an emphasis on science and technology or on technology in its application to the performing and creative arts as the case may be. Such schools may be established as charities. The first city college to be established was Kingshurst City Technology College at Solihull which was registered as a charity during the year.

Section 112 of the Act increases the scope of section 2 of the Education Act 1973 under which the Secretary of State may, by order, make new provision for endowments *held* (that is to say, held under the trusts affecting the endowment) wholly or partly for or in connection with the provision at a voluntary school of denominational religious education. Subject to certain requirements, the Secretary of State may now by order make new provision as to the use of any endowment if it is shown to his satisfaction that the endowment is or has been *used* wholly or partly for or in connection with the provision at a voluntary school or a grant-maintained school of religious education in accordance with the tenets of a particular religious denomination.

The Act also provides for reorganisation of the provision and funding of higher education. The Act empowers the Secretary of State by order to establish a body corporate (a higher education corporation) to conduct each institution meeting certain criteria maintained by a local education authority and specified in the order. In practice, higher education corporations will be established for all maintained polytechnics and many of the larger maintained colleges. Higher education corporations and certain other institutions providing higher education or advanced further education and designated by order of the Secretary of State will be eligible to receive support from funds administered by a new body, the Polytechnics and Colleges Funding Council. Every higher education corporation will be an exempt charity for the purposes of the Charities Act 1960.

The Act also provides for the abolition of the Inner London Education Authority on 1 April 1990 and for each inner London council to become the local education authority for its area, with consequences for the trusteeship of charities of which ILEA is the sole trustee or otherwise has an interest in the trusteeship, on that date.

(c) Finance Act 1988

One effect of this Act was to increase from £120 to £240 a year the maximum tax-free donation which an employee may make to charities through the payroll deduction scheme. (In his budget Speech of 14 March 1989 the Chancellor of the Exchequer announced the Government's intention to increase the sum further to £480 with effect from 6 April 1989).

(d) The Registered Housing Associations (Accounting Requirements) Order 1988 (SI 1988/395)

This Order replaces the Registered Housing Associations (Accounting Requirements) Order 1982, the Registered Housing Associations (Accounting Requirements for Almshouses) Order 1983 and the Registered Housing Associations (Limited Accounting Requirements) Order 1984. The provisions of the 1988 Order apply to all registered housing associations in relation to accounting periods commencing on or after 1 April 1988. The amendments made by the new Order are as follows:

(1) limited accounting requirements are applied to associations providing 250 or fewer units of accommodation (formerly 100 under the 1984 Order);

(2) the requirement, where it applied, for a summary income and expenditure account is removed;

(3) provision is made for disregarding amounts which are immaterial;

(4) some items required by Schedule 1 to the 1982 Order to be shown in the balance sheet or notes to the accounts are omitted;

(5) further items are required to be shown in the income and expenditure account of an association which is not a co-ownership society;

(6) the requirement to show the housing administration costs for each bed space is omitted in relation to hostels.

The accounting requirements for almshouse charities which are registered housing associations are, in most respects, similar to those set down in the 1983 Order. Such charities may, if they wish, follow the accounting requirements laid down for either large or, provided they meet the qualifying criteria, small associations.

(e) Housing Act 1988

This Act, which came into effect on 15 January 1989, includes provision for making assured tenancies the normal form of tenancy, subject to certain exceptions, for rented accommodation in both the private and the housing association sectors. Most new housing association tenancies created on or after that date will be assured tenancies for which the rents will be set by the associations and not by the rent officer. The Act contains provisions for the phasing out of the Rent Acts and other transitional provisions. In particular, a tenancy which is entered into after the commencement of the Act cannot be a protected tenancy, a housing association tenancy, a secure tenancy, or, for the purposes of the Housing Act 1980, an assured tenancy except in special cases specified in the Act. Almshouse charities are not affected by the arrangements for assured tenancies, since the residents are not, and are not deemed to be, tenants.

The Act provides for the establishment of a body to be known as Housing for Wales to take over the Housing Corporation's responsibilities for housing associations in Wales; adds to the list of permissible purposes or objects indicating eligibility for registration as a housing association thus amending the Housing Associations Act 1985; and confers powers on both the Housing Corporation and Housing for Wales to issue guidance, with the approval of the Secretary of State, with respect to the management of housing accommodation by registered housing associations, to make grants, including revenue deficit grants, to such associations and to reduce, suspend or recover grants in such events as each body may from time to time determine. A general determination (that is one not relating solely to a particular case) under these provisions may be made with the approval of the Secretary of State and the consent of the Treasury.

Part III of the Act concerns the establishment by order of the Secretary of State of Housing Action Trusts (HATS), and sets out their objects, general powers and functions, and provides for the transfer of land and other property to them and for the subsequent disposal of land and other property. The primary objects of a HAT include securing, in an area or areas designated by the Secretary of State, the repair or improvement of housing accommodation for the time being held by it and the proper and effective use of that accommodation; and generally securing or facilitating the improvement of living conditions in the area and the social conditions and general environment of the area. When a HAT considers that its objects have been substantially achieved it is under a duty, so far as practicable, to dispose or arrange to dispose of any remaining property, rights or liabilities of the trust and to submit to the Secretary of State proposals for the dissolution of the trust.

Part IV of the Act confers powers on anyone who has been approved by the Housing Corporation or Housing for Wales, the right to acquire from a public sector landlord as defined in the Act dwellinghouses occupied by qualifying tenants of the public sector landlord. Subject to certain exceptions, a qualifying

tenant is one who holds his secure tenancy directly from the landlord as owner of the fee simple estate. Procedures for acquiring property include the applicant landlord consulting with tenants in accordance with provisions to be prescribed in regulations made by the Secretary of State. An applicant may not proceed with the acquisition if the number of tenants entitled to be consulted who give notice of their wishes is less than 50% of the total who are so entitled or the number of such tenants who give notice of a wish to continue as tenants of the existing landlord is more than 50% of those entitled to be consulted. Where an acquisition is to proceed but the property concerned includes a flat, and the tenant has given notice of his wish to remain a tenant of the landlord, the applicant must grant a lease of the flat to the landlord immediately after the acquisition. Many registered housing associations have expressed interest in the possibility of obtaining approval to acquire public sector housing.

Appendix C

(Paragraph 49)

MAKING A SCHEME

Introduction

Under section 18 of the Charities Act 1960 the Commissioners have power to make schemes for the administration of charities. This leaflet is intended to help trustees who may apply to the Commissioners for a scheme by giving brief answers to the following questions:

- What is a scheme?
- When is a scheme needed?
- Who decides what a scheme shall contain?
- What happens when the broad outlines have been agreed?
- How is publicity given to the draft scheme?
- When can the scheme be made?
- Are there any other requirements?
- How long does it take for a scheme to be made?
- Will the trustees have to pay for the scheme?

What is a scheme?

A scheme is a legal document by which the Commissioners may among other things:

- change the objects of a charity;
- set up a new body of trustees to run the charity;
- give the trustees some power which they do not already have;

When is a scheme needed?

Often a scheme will be needed to make a charity more effective because, for example, the original purpose for which it was set up:

- can no longer be carried out in the way laid down by the founder; or
- may have been adequately provided for in other ways; or
- may have stopped being a useful way of using the funds or property of the charity.

In some cases a charity can be made more effective by making a scheme to amalgamate it with another charity or charities having similar purposes.

If charity trustees have any difficulties in running their charity the Commissioners are always willing to discuss with them ways in which the situation can be improved and, if necessary, to make a scheme to bring any agreed changes into effect. This applies both to its purposes and how it is run.

Who decides what a scheme shall contain?

The contents of a scheme are agreed in broad outline by the Commissioners and the charity trustees. In some cases the Commissioners will be able to let the trustees have an example of the type of scheme they think would be most suitable. If that is not possible the Commissioners will explain the most important features of their proposals in a letter or will discuss them at a meeting with the trustees.

What happens when the broad outlines have been agreed?

Once the broad outlines of the scheme have been agreed between the trustees and the Commissioners, the trustees will be invited to apply formally to the Commissioners for a scheme. The Commissioners will then prepare a detailed draft of the scheme and send copies to the trustees for their comments and agreement. At the same time, the trustees may be asked to provide information which is needed to complete the draft, such as the full name of a new trustee or a description of some property belonging to the charity.

When a completed application form has been returned, and the draft scheme has been agreed, the trustees will be sent instructions about how the public can be told of the Commissioners' intention to make the scheme.

How is publicity given to the draft scheme?

Publicity is given to the draft scheme by displaying notices inviting representations to be made to the Commissioners about the proposals within a period of one month as required by law. The Commissioners will send the trustees copies of the notices and full instructions for publishing them. The Commissioners will usually insist that

For a local charity –

notices are displayed on public notice boards in the area in which the charity operates and in some cases that a notice is published in a local newspaper;

a copy of the draft scheme is made available for public inspection at some suitable place in the locality.

For a charity which has a wide area of benefit —

a notice is published in a newspaper circulating widely in that area.

For a charity which has an unrestricted area of benefit —

a notice is published in a national newspaper such as "The Times" or in some other publication having wide circulation which members of the public interested in the charity could be expected to read.

The trustees will be asked to return the following papers when the required publication period has ended:

1. an approved copy of the draft scheme;
2. a declaration confirming that each notice has been correctly published; and
3. where appropriate, a copy of the page of the newspaper in which the notice appeared.

When can the scheme be made?

Before the scheme can be made the Commissioners will consider any representations made to them about the proposed scheme and may change its terms. If they agree changes should be made they will tell the trustees. The scheme can then be made, provided that the papers 1, 2 and 3 above have been received by the Commissioners.

The scheme comes into force on the date on which directions are given for the Commissioners' seal to be affixed to it. In many cases the original sealed scheme is sent first to the Inland Revenue for confirmation that no stamp duty is payable. It is then sent to the trustees with copies for their use. If further copies are requested the Commissioners usually make a charge to cover the cost of photocopying and postage.

As the sealed scheme is a legal document, the trustees should keep it safely with the charity's other legal documents.

Are there any other requirements?

Yes. When the sealed scheme and copies are sent to the trustees they will also receive further notices and instructions for publishing them. These notices are required by law and will inform the public that the scheme has been made and give anyone who wishes to appeal to the High Court against the scheme three months within which to do so. Appeals of this kind are very rare.

When the publication of notices has been completed the trustees will be asked to return the following papers:

1. a declaration confirming that each notice has been correctly published; and
2. where appropriate, a copy of the page of the newspaper in which the notice appeared.

The scheme-making procedure is then complete.

How long does it take for a scheme to be made?

It is difficult to say exactly how long it takes to make a scheme because each case is different. For example, much depends on:

- how complicated the scheme is;
- how quickly the trustees can meet to consider the draft at different stages; and
- whether any major objections are received when publicity is given to the draft.

However, in many cases a scheme comes into force about three months after the trustees have approved the detailed draft and have returned the application form.

Will the trustees have to pay for the scheme?

No. The Commissioners make no charges for making schemes. Any costs incurred by the trustees in publishing notices can be met out of the charity's income.

NB This leaflet is for guidance only: it is not a full statement of the law.

Appendix D

(Paragraph 84)

OFFICIAL CUSTODIAN FOR CHARITIES

Foreword

1. The Official Custodian for Charities is a corporation sole created by section 3 of the Charities Act 1960 to act as a trustee for charities in respect of:

(i) any charity land or other property vested in him by an Order of the Court or of the Charity Commissioners;

(ii) any charity funds, including investments and mortgages, which he agrees may be transferred to him.

The Charity Commissioners designate one of their officers to be the Official Custodian; and he performs his duties in accordance with the directions of the Commissioners.

2. S3(6) of the Charities Act 1960 provides that the Official Custodian shall keep such books of account and shall prepare such accounts as the Treasury may direct.

3. The Official Custodian has the same powers, duties and liabilities as a custodian trustee appointed under s4 of the Public Trustee Act 1906, except that he has no power to charge fees for his statutory services. He is expressly precluded from taking any part in the administration of any charity (s17(1) of the Charities Act 1960). The responsibility for managing charity property held in the name of the Official Custodian remains wholly with the managing trustees.

4. The primary aim of the Official Custodian, in respect of charity funds entrusted to him, is to safeguard those funds. He also provides a number of services to charity trustees whose funds he holds.

5. The Official Custodian buys and sells investments in his name for charities on the instructions of the trustees. Where necessary he uses stockbrokers for this purpose. If trustees wish to use their own investment agents he will allow transactions to be carried out by the agents in his name. In this case, settlement is undertaken between the trustees and their agents and no money passes through the Official Custodian's books. The Official Custodian informs charity trustees whenever an investment held on their behalf becomes due for redemption or eligible for conversion or carries rights which call for a decision; and he acts in accordance with their instructions. The Official Custodian reclaims from the Inland Revenue (in advance) or overseas tax authority all recoverable tax on dividends and interest on investments held by him and remits the gross amounts to charity trustees on or as soon as possible after the due payment dates.

6. The Official Custodian acts as registrar for the Charities Official Investment Fund. Shares in this Fund may be held only in his name.

7. The Official Custodian's Receipts and Payments Account shows receipts and payments of dividends and interest and of cash involved in, or arising from, investment transactions. The major part of the Official Custodian's work in connection with the acquisition, disposal or conversion of investments does not, however, involve the receipt by him or payment to him of cash (Note 4a to the Account). The schedule of acquisitions and disposals of securities (Note 4d to the Account) provides a clearer representation of the investment work carried out by the Official Custodian's office.

R J Crick, Official Custodian for Charities
22 March 1989

OFFICIAL CUSTODIAN FOR CHARITIES

Receipts and Payments Account for the year ended 31 December 1988

	Notes	£,000	£,000	Previous Year £,000
CAPITAL:				
Receipts:				
From trustees for investment (including dividends and interest retained)	2a,c	31,205		35,091
From disposal of investments	2a	44,501		42,114
			75,706	77,205
Deduct payments:				
Purchase of investments	2a	45,922		50,746
Amounts remitted to trustees	2a	29,416		27,689
			75,338	78,435
	2d		368	(1,230)
DIVIDENDS AND INTEREST:				
From investments held	2b	89,783		90,155
Deduct amounts remitted to trustees (including amounts retained for investment)	2b,c	89,668		88,763
	2e		115	1,392
			483	162
OTHER: receipts (payments) net	3		(363)	43
EXCESS: of receipts over payments (payments over receipts)			120	205
Statement of balances as at 31 December 1988				
Balance at 1 January 1988			3,234	3,029
Add (deduct) excess of receipts (payments)			120	205
Balance at 31 December 1988			3,354	3,234

The Notes numbered 1 to 4 form part of these Accounts.

Notes to the Account

Note 1

In accordance with s.3(6) of the Charities Act, 1960, the Account is drawn up in the form directed by the Treasury.

Note 2 – Accounting policies

a The Official Custodian has no funds of his own and no power to make investment decisions on behalf of charity trustees. In the investment or disinvestment of charity funds, he may act only on, and in accordance with, instructions from the trustees. The proceeds of investment disposals may be reinvested or remitted to the charity trustees. Where capital funds are involved, the Official Custodian will not normally release the funds without taking steps to ensure that the capital is reinvested in his name. Funds expendable for the purposes of the charity may normally be withdrawn at the trustees' discretion.

b Investments held by the Official Custodian for more than one charity are registered in aggregated holdings in his name. Where an aggregated investment holding is held, the Official Custodian apportions dividends or interest payments received (with the benefit of all recoverable tax) between the charities concerned. Dividend and interest amounts in the Account include recoverable tax.

c The Official Custodian either remits dividends and interest payments to the charities' bank accounts or retains them for investment in accordance with standing instructions from the trustees. The amount retained for investment in 1988 was £990,256.

d Investment transactions are carried out promptly by the Official Custodian. Unavoidable delays in settlement of investment transactions result in relatively small differences between total receipts and payments over the year.

e The Official Custodian retains dividend and interest payments under £1 as they are received and remits them once a year or on demand. Dividends and interest due to trustees (£114,680) include these accumulated sums, amounts received late in the year, advances of tax from the Inland Revenue and balances held while investment holdings are reconciled with registrars' books.

Note 3—OTHER: Receipts (payments) net

These comprise miscellaneous receipts and payments by way of fractional residues of cash entitlements arising on aggregated holdings and not applicable to individual charities; cash arising from, or paid out of the Departmental Vote as compensation for, errors in cash or investment dealings; miscellaneous commission received not applicable to individual charities, etc.

Note 4—Securities

a The schedule at 4d. reflects—
  (i) acquisitions and disposals of investments by the Official Custodian acting on the instructions of charity trustees;
  (ii) purchases and sales carried out in the Official Custodian's name by investment agents acting directly for trustees; and
  (iii) other transfers of investments to and from the Official Custodian.
  In the case of (ii) and (iii) above, no cash passes through the books of the Official Custodian and the transfers are not reflected in his Receipts and Payments Account.

b Share and unit holdings, whether with or without a par value, are shown as numbers of shares or units. Holdings of UK stock and foreign debentures are shown as nominal amounts in the relevant currency.

c Transactions in investments are recorded on the basis of contractual entitlement. Transactions carried out by the Official Custodian are recorded without delay. Where the transaction has been carried out by the trustees' own investment agents, however, there can be a delay before the Official Custodian is notified of the transaction. Transactions occurring in the current year, but notified to the Official Custodian after 31 December, are included in the following year's Account.

d Total amounts of securities placed to the account of the Official Custodian and transferred therefrom in the year ended 31 December 1988 and the balances standing to the account of the Official Custodian at that date are as follows:

	Balance on 1 January 1988	Transferred to Official Custodian	Transferred from Official Custodian	Balance on 31 December 1988
British Investments:				
Issued or guaranteed by the Government—				
Dated stocks	£373,862,875	£68,212,887	£68,582,611	£373,493,151
Undated stocks	£21,963,699	£244,334	£965,721	£21,242,312
Issues by Local Authorities—				
Dated stocks	£4,200,087	£90,094	£1,402,303	£2,887,878
Undated stocks	£910,486	£270	£3,894	£906,862
Mortgages and Bonds	£3,413,087	£317,361	£946,549	£2,783,899
Temporary Loans	£744,505	£29,500	£74,801	£699,204
Issued by other statutory authorities	£3,539,794	£114,971	£693,209	£2,961,556
Issued by Companies—				
Loan Capital	£53,130,815	£17,106,543	£17,927,281	£52,310,077
Preference Capital	14,044,190 Shares	16,074,384 Shares	7,300,274 Shares	22,818,300 Shares
Ordinary Capital	241,558,822 Shares	90,752,994 Shares	99,665,540 Shares	232,646,276 Shares
Interest-bearing Deposits	£25,799,078	£22,570,823	£17,303,905	£31,065,996
Real Securities	£79,632	Nil	£59,132	£20,500
Miscellaneous Shares	127,943 Shares	357,680 Shares	237,078 Shares	248,545 Shares
Currency	£151,806	£101,400	£100,837	£152,369
Annuities	£1,913	Nil	Nil	£1,913
Commonwealth Investments:				
Government, Provincial and other Securities	£1,907,719	£17,223	£166,420	£1,758,522
Foreign Government, Municipal and other Securities	£124,908	Nil	£9,000	£115,908
Investments expressed in other Currencies:				
Shares of Commonwealth and foreign undertakings	1,666,896 Shares	690,921 Shares	1,039,398 Shares	1,318,419 Shares
Debentures				
Roubles (Imperial)	93,750 Roubles	Nil	Nil	93,750 Roubles
Irish Punts	58,510 Punts	9,023 Punts	11,200 Punts	56,333 Punts
US Dollars	103,500 Dollars	Nil	100,000 Dollars	3,500 Dollars
Investments not expressed in Currency				
National Savings Certificates	719 Units	21 Units	44 Units	696 Units
Charitable Investment Funds—				
Charities Official Investment Fund	56,392,050 Income Shares	2,250,312 Income Shares	873,100 Income Shares	57,769,262 Income Shares
	2,758,493 Accumulation Shares	94,457 Accumulation Shares	132,319 Accumulation Shares	2,720,631 Accumulation Shares
Other Funds	82,646,347 Income Shares	7,756,062 Income Shares	1,667,437 Income Shares	88,734,972 Income Shares
	3,629,408 Accumulation Shares	472,268 Accumulation Shares	153,517 Accumulation Shares	3,948,159 Accumulation Shares
Unit Trusts	107,034,288 Units	36,302,075 Units	24,934,067 Units	118,402,296 Units
Shares of No Par Value	14,501 Shares	785,761 Shares	4,574 Shares	795,688 Shares
Subscription Warrants	681,139 Warrants	377,327 Warrants	295,420 Warrants	763,046 Warrants
Participation Units	452 Units	Nil	Nil	452 Units

The Seal of the Official Custodian for Charities was affixed hereto in the presence of

R J Crick
Official Custodian for Charities

22 March 1989

Mrs S E Gillingham

Authorised under Section 3(4) of the Charities Act 1960. Charity Commission, St Alban's House, 57/60 Haymarket, London SW1Y 4QX

Certificate and Report of the Comptroller and Auditor General
I certify that I have examined the financial statements on pages 34 to 35 in accordance with the Charities Act 1960 and the National Audit Office auditing standards.

In my opinion the financial statements properly present the receipts and payments of the Official Custodian for Charities for the year ended 31 December 1988 and the balances held at that date and have been properly prepared in accordance with s.3(6) of the Charities Act 1960.

I have no observations to make on these financial statements.
NATIONAL AUDIT OFFICE
28 March 1989

JOHN BOURN
Comptroller and Auditor General

Printed in the United Kingdom for Her Majesty's Stationery Office
Dd 0500731 5/89 C12 58742 3382/1C 56675 4872

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