

CHARITIES, ENGLAND AND WALES

The Charities (Total Return) (Amendment) Regulations 2023

Made 25 April 2023

Coming into force in accordance with regulation 1(2)

The Charity Commission for England and Wales makes the following Regulations in exercise of the powers conferred by section 104B of the Charities Act 2011^(a).

Citation and commencement

1. (1) These Regulations may be cited as the Charities (Total Return) (Amendment) Regulations 2023.
- (2) These Regulations come into force on the date on which section 13 of the Charities Act 2022 comes into force.

Amendments to the Charities (Total Return) Regulations 2013

2. (1) The Charities (Total Return) Regulations 2013^(b) are amended as follows.
- (2) In regulation 2 –

in the definition of “investment return” at the end of bullet point “any capital losses resulting on or from the disposal, redemption, or revaluation of investment assets;” insert “and less” and the following bullet point “any capital losses resulting from the making of any social investments;”

after the definition of “relevant percentage” insert ““relevant social investment fund” has the same meaning as in section 104B(6) of the 2011 Act;”

^(a) 2011 c.25.

^(b) The Charities (Total Return) Regulations 2013 were made on 25 October 2013 and came into force on 1 January 2014. The regulations set out investment powers for trustees of permanently endowed charities [20131025-the-charities-total-return-regulations-2013.pdf \(publishing.service.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/261025/the-charities-total-return-regulations-2013.pdf). The 2013 Regulations were amended following a five-year statutory review by the Charities (Total Return) (Amendment) Regulations 2018, which were made on 20 December 2018 and came into force on 1 January 2019 [Charities Total Return Amendment Regulations 2018.pdf \(publishing.service.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/761025/Charities_Total_Return_Amendment_Regulations_2018.pdf).

after the definition of “section 104A(2) resolution” insert ““section 104AA(2) resolution” means a resolution made pursuant to s104AA(2) of the 2011 Act to adopt a total return approach to investment in relation to a fund or portion of a fund (including the returns from the investment of such fund or portion of it) to make social investments (within the meaning of section 292A of the 2011 Act) which they could not otherwise make;”

after the newly inserted definition of “section 104AA(2) resolution” insert ““social investment” has the same meaning as in section 292A of the 2011 Act;”

(3) After regulation 5, insert –

“5A. (1) This regulation applies where the trustees make a section 104AA(2) resolution.

(2) The trustees may use the relevant social investment fund to make social investments that are expected to have a negative or uncertain financial return subject to subsection (3).

(3) A social investment that is expected to have a negative or uncertain financial return may only be made where the trustees expect any such loss to be offset by gains as part of the total return from the relevant fund.

(4) When exercising the power under this regulation trustees should have regard to the duty set out in regulation 6(2) below.”

(4) In regulation 6(2), after “relevant fund” insert “and (where applicable) a relevant social investment fund”.

(5) In regulation 6(3)(a), after “relevant fund” insert “and (where applicable) a relevant social investment fund”.

(6) In regulation 6(3)(c), for “regulations 3 to 5” substitute “regulations 3 to 5A”.

(7) After regulation 7, insert –

“7A (1) This regulation applies where the Charity Commission for England and Wales has, prior to the commencement of section 104AA(2) of the 2011 Act, conferred on the trustees of a charity a power enabling them to use permanent endowment to make social investments with an uncertain or negative financial return by way of an order under section 26 of the Charities Act 1993 or section 105 of the 2011 Act.

(2) Where the trustees make a section 104AA(2) resolution, they may take these regulations as discharging that order subject to the continued payment of any amounts agreed to be repaid by way of recoupment.”

Executed by the Charity Commission for England and Wales acting by its Chief Executive Helen Stephenson:

A handwritten signature in black ink, appearing to read 'Helen Stephenson', written over a horizontal dotted line.

Helen Stephenson
Chief Executive of the Charity Commission for England and Wales

25 April 2023

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Charities (Total Return) Regulations 2013, which facilitate total return investment by permanently endowed charities. They set out the circumstances in which the new powers under the Charities Act 2022 (**c.6**) can be used. The Charities Act 2022 gives trustees a new power, once they have made a s104A(2) resolution to opt into the regulations governing total return investment, to make a further resolution under s104AA(2) to resolve that the permanent endowment restrictions be further released to permit them to make social investments with a negative or uncertain financial return, provided that any losses are offset by gains made elsewhere in the relevant fund.