

## Memorandum of Understanding between the Information Commissioner and Charity Commission

### Introduction

1. This Memorandum of Understanding (MoU) establishes a framework for cooperation and information sharing between the Information Commissioner ("**the Commissioner**") and the Charity Commission, collectively referred to as "**the parties**" throughout this document. In particular, it sets out the broad principles of collaboration and the legal framework governing the sharing of relevant information and intelligence between the parties. The shared aims of this MoU are to enable closer working between the parties, including the exchange of appropriate information, so as to assist them in discharging their regulatory functions.
2. This MoU is a statement of intent that does not give rise to legally binding obligations on the part of either the Commissioner or Charity Commission. The parties have determined that they do not exchange sufficient quantities of personal data to warrant entering into a separate data sharing agreement, but this will be kept under review.

### The role and function of the Information Commissioner

3. The Commissioner is a corporation sole appointed by Her Majesty the Queen under the Data Protection Act 2018 to act as the UK's independent regulator to uphold information rights in the public interest, promote openness by public bodies and data privacy for individuals.
4. The Commissioner is empowered to take a range of regulatory action for breaches of the following legislation:
  - Data Protection Act 2018 (DPA);
  - General Data Protection Regulation (GDPR);

- Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR);
  - Freedom of Information Act 2000 (FOIA);
  - Environmental Information Regulations 2004 (EIR);
  - Environmental Protection Public Sector Information Regulations 2009 (INSPIRE Regulations);
  - Investigatory Powers Act 2016;
  - Re-use of Public Sector Information Regulations 2015;
  - Enterprise Act 2002;
  - Security of Network and Information Systems Directive (NIS Directive); and
  - Electronic Identification, Authentication and Trust Services Regulation (eIDAS).
5. Article 57 of the GDPR and Section 115(2)(a) of the DPA 2018 place a broad range of statutory duties on the Commissioner, including monitoring and enforcement of the GDPR, promotion of good practice and adherence to the data protection obligations by those who process personal data. These duties sit alongside those relating to the other enforcement regimes outlined in paragraph 4 above.
6. The Commissioner's regulatory and enforcement powers include:
- conducting assessments of compliance with the DPA, GDPR, PECR, eIDAS, the NIS Directive, FOIA and EIR;
  - issuing information notices requiring individuals, controllers or processors to provide information in relation to an investigation;
  - issuing enforcement notices, warnings, reprimands, practice recommendations and other orders requiring specific actions by an individual or organisation to resolve breaches (including potential breaches) of data protection legislation and other information rights obligations;
  - administering fines by way of penalty notices in the circumstances set out in section 155 of the DPA;

- administering fixed penalties for failing to meet specific obligations (such as failing to pay the relevant fee to the Commissioner);
  - issuing decision notices detailing the outcome of an investigation under FOIA or EIR;
  - certifying contempt of court should an authority fail to comply with an information notice, decision notice or enforcement notice under FOIA or EIR; and
  - prosecuting criminal offences before the Courts.
7. Regulation 31 of PECR, as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011, also provides the Commissioner with the power to serve enforcement notices and issue monetary penalty notices as above to organisations who breach PECR. This includes, but is not limited to, breaches in the form of unsolicited marketing which falls within the ambit of PECR, including automated telephone calls made without consent, live telephone calls which have not been screened against the Telephone Preference Service, and unsolicited electronic messages (Regulations 19, 21 and 22 of PECR respectively).

### **Functions and powers of the Charity Commission**

8. The Charity Commission is the statutory regulator and registrar of charities in England and Wales. Its powers and procedures are set out in the Charities Act 2011 ("The Charities Act"). The Charity Commission is a non-ministerial government department. The Charities Act specifically prohibits the exercise of any Charity Commission function being subject to the direction or control of any Minister or other government department.
9. The Charity Commission's objectives (Charities Act 2011, Chapter 2, Part 2, Section 14) are defined as follows:
- the public confidence objective is to increase public trust and confidence in charities;
  - the public benefit objective is to promote awareness and understanding of the operation of the public benefit requirement;

- the compliance objective is to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities;
  - the charitable resources objective is to promote the effective use of charitable resources; and
  - the accountability objective is to enhance the accountability of charities to donors, beneficiaries, and the general public.
10. The Charity Commission's general functions (Charities Act 2011, Chapter 2, Part 2, Section 15) include:
- determining whether institutions are or are not charitable;
  - encouraging and facilitating the better administration of charities;
  - identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement; and
  - obtaining, evaluating and disseminating information in connection with the performance of any of the Charity Commission's functions or meeting any of its objectives.
11. The Charity Commission's general duties are specified in s.16 of the Charities Act 2011. These duties include (without limitation) in the performance of its functions the duty to have regard to:
- the principles of best regulatory practice so far as they are relevant (which include the principles under which regulatory activities should be proportionate, accountable, consistent, transparent, and targeted only at cases in which action is needed); and
  - the need to use its resources in the most efficient, effective and economic way.
12. In pursuance of its objectives and functions, the Charity Commission maintains a register of charities. The Charity Commission's jurisdiction extends to all registered charities and all unregistered charities (other than limitation on the use of its powers in relation to exempt charities). The term "charities" and "charitable

purposes” refers to organisations and purposes which are exclusively under the law of England and Wales. They will include charitable collections and funds managed on an informal basis by any person or organisation.

13. Most concerns that the Charity Commission identifies in respect of charities are dealt with as operational regulatory compliance cases. These cases are not formal inquiries, but are aimed at ensuring trustees address any failures and weaknesses in their charity’s management. Statutory inquiries (under s.46 of the Charities Act) may be opened in accordance with the Charity Commission’s Regulatory and Risk Framework where there are serious concerns about potential or actual abuse within a charity. The Charity Commission also undertakes proactive and reactive monitoring of charities which give rise to regulatory concerns. [Appendix C](#) sets out further information on terminology used by the Charity Commission.
14. The Charity Commission works with other agencies, regulators and government departments where appropriate to help it achieve its statutory objectives, to complement its work and to minimise dual regulation. Where there is a problem within a charity that is being adequately addressed by another agency (or agencies) the Charity Commission may work with them to increase effective regulation.
15. The Charity Commission’s powers includes those listed at [Appendix B](#). The Charity Commission’s powers include powers for the protection of charities which the Charity Commission may use when dealing with the situations described in paragraphs 13 and 14. The Charity Commission can only use its powers in certain circumstances and some can only be used in the context of an inquiry as indicated in [Appendix B](#).
16. The Charity Commission also has extensive information-gathering powers. It may:
  - order anyone to provide it with information in his or her possession which is relevant to the discharge of any of its functions; or
  - direct anyone to provide written statements, or written answers to questions concerning any matter which it is investigating about which that individual has, or can reasonably obtain, information.

17. The supply of false or misleading information to the Charity Commission is a criminal offence (under s.60 of the Charities Act 2011) if done knowingly or recklessly.
18. The Charity Commission can only use its information gathering powers to acquire information for use in discharging its statutory functions.
19. Information acquired by the use of the Charity Commission's information gathering powers can only be used for the purpose for which the powers were given.

### **Purpose of information sharing**

20. The purpose of the MoU is to enable both the Commissioner and the Charity Commission to share relevant information which enhances their ability to exercise their respective functions. Examples of anticipated information sharing between the parties are included in a non-exhaustive list in [Appendix A](#).
21. This MoU should not be interpreted as imposing a requirement on either party to disclose information in circumstances where doing so would breach their statutory responsibilities. In particular, each party must ensure that any disclosure of personal data pursuant to these arrangements fully complies with s.54 – 59 of the Charities Act 2011, the GDPR and the DPA 2018, and is not contrary to the Human Rights Act 1998.
22. The MoU sets out the potential legal basis for information sharing, but it is for each party to determine for themselves that any proposed disclosure is compliant with the law.

### **Principles of cooperation and sharing**

23. The Parties do not anticipate that any personal data transferred to them by the other Party pursuant to this Memorandum ("Transferred Personal Data") will require any of the following forms of processing:
  - the processing of personal data by one Party on behalf of the other Party causing the former to be acting as Data Processor; or
  - the processing of personal data jointly by the Parties causing the Parties to be Joint Controllers.

24. In the event that a transfer of personal data will amount to either of the forms of processing in paragraph 23, the Parties will negotiate in good faith a supplementary agreement setting out each Party's rights and obligations in accordance with the requirements of Data Protection Act 2018 and the GDPR.
25. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, the Charity Commission will alert the Commissioner to any potential breaches of the legislation regulated by the Commissioner discovered whilst undertaking regulatory duties, and provide relevant and necessary supporting information. The Commissioner will also, at her discretion, alert the Commission to any such breaches where these have the potential to negatively impact on public trust and confidence in the charitable sector (in accordance with Appendix A).
26. Similarly, although again subject to any legal restrictions on the disclosure of information, the Commissioner will, at her discretion, alert the Charity Commission to any potential breaches of the legislation regulated by the Charity Commission within the context of this relationship and provide relevant and necessary supporting information.
27. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, the parties will:
  - Communicate regularly to discuss matters of mutual interest (this may involve participating in multi-agency groups to address common issues and threats); and
  - Consult one another on any issues which might have significant implications for the other organisation.
28. The parties will comply with the general laws they are subject to, including, but not limited to, local data protection laws; the maintenance of any prescribed documentation and policies; and comply with any governance requirements in particular relating to security and retention, and process personal data in accordance with the statutory rights of individuals.

## Legal basis for sharing information

### *Information shared by the Charity Commission with the Commissioner*

29. The Commissioner's statutory function relates to the legislation set out at paragraph 4, and this MoU governs information shared by the Charity Commission to assist the Commissioner to meet those responsibilities. To the extent that any such shared information is to comprise personal data, as defined under the GDPR and DPA 2018, the Charity Commission is a Data Controller so must ensure that it has a legal basis to share it and that doing so would otherwise be compliant with the data protection principles.
30. Sections 54 to 59 of the Charities Act provide a statutory gateway, for the disclosure of information by the parties. The Charity Commission also has general powers to share information. However for the avoidance of doubt nothing in sections 54 to 57 authorises the making of a disclosure which is:
  - contrary to the Data Protection Act 2018, the General Data Protection Regulation;
  - prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (section 59); or
  - contrary to the Human Rights Act 1998 and other relevant legislation.
31. When disclosing information under the statutory gateway or its general powers, the parties must ensure the provisions of section 54-59 of the Charities Act 2011 (where applicable) and the terms of this Memorandum are satisfied.
32. Section 56 of the Charities Act deals with disclosures **by** the Charity Commission generally and gives the Charity Commission the powers exercisable at its discretion to disclose to a relevant public authority any information received by the Charity Commission in connection with any of the Charity Commission's functions if:
  - the disclosure is made for the purposes of enabling or assisting that relevant public authority to discharge any of its functions; or



- the information so disclosed is otherwise relevant to the discharge of any functions of that relevant public authority.
33. Section 54 of the Charities Act 2011 deals with disclosure **to** the Charity Commission generally and gives any relevant public authority the ability, at its discretion, to disclose information to the Charity Commission if the disclosure is made for the purposes of enabling or assisting the Charity Commission with the discharge of any of its functions. The Parties agree that the Commissioner is a relevant public authority for the purpose of section 54 and 56 of the Charities Act 2011.
34. Information about the status of charities (whether registered or removed, or if an interim manager has been appointed), the activities of a charity and where it is able to operate, main contact details, the financial history, and whether there is a public statement regarding the opening of an inquiry are also available as part of the public Register of Charities for England and Wales.  
<https://www.gov.uk/government/organisations/charity-commission>
35. The Charity Commission has the discretion to disclose information it has received in connection with any of its functions under section 56. However if:
- the information has been received by the Charity Commission under s.54(1) subject to an express restriction then the Charity Commission must first obtain consent to further disclose the information (section 56(3)); or
  - the information has been received by the Charity Commission from HMRC then the Charity Commission must first obtain the consent of HMRC to further disclose the information (section 57(2)). Section 57(3) makes it an offence to disclose HMRC information in contravention of 57(2).
36. The Charity Commission also has the discretion to disclose, under its general powers under the Charities Act 2011, information other than that which it has received from third parties. Such disclosures must also be compliant with all relevant legislation.

37. In some circumstances the Charity Commission may not be able to share information where acting upon this information would be likely to prejudice an on-going investigation.
38. Section 131 of the Data Protection Act 2018 may (subject to s.131(2) and (3)), provide a legal basis for the Charity Commission to share information with the Commissioner. Under this particular provision, the Charity Commission is not prohibited or restricted from disclosing information to the Commissioner by any other enactment or rule of law provided it is "information necessary for the discharge of the Commissioner's functions".

*Information shared by the Commissioner with the Charity Commission*

39. The Commissioner, during the course of her activities, will receive information from a range of sources, including personal data. She will process all personal data in accordance with the principles of the GDPR, the DPA 2018 and all other applicable legislation. The Commissioner may identify that information she holds, which may include personal data, ought to be shared with the Charity Commission as it would assist them in performing their functions and responsibilities. To the extent that any such shared information is to comprise personal data, as defined under the GDPR and DPA 2018, the Commissioner is a Data Controller so must ensure that she has a legal basis to share it and that doing so would otherwise be compliant with the data protection principles.
40. Section 132(1) of the DPA 2018 states that the Commissioner can only share confidential information with others if there is lawful authority to do so. In this context, the information will be considered confidential if has been obtained, or provided to, the Commissioner in the course of, or the purposes of, discharging her functions, relates to an identifiable individual or business, and is not otherwise available to the public from other sources. This therefore includes, but is not limited to, personal data. Section 132(2) of the DPA 2018 sets out the circumstances in which the Commissioner will have the lawful authority to share that information with the Charity Commission. In particular, it will be lawful in circumstances where:

- The sharing was necessary for the purpose of the Commissioner discharging her functions (section 132(2)(c));
- The sharing was made for the purposes of criminal or civil proceedings, however arising (section 132(2)(e)); or
- The sharing was necessary in the public interest, taking into account the rights, freedoms and legitimate interests of any person (section 132(2)(f)).

Specific examples of where an exchange may be necessary for the discharge of the parties' respective functions or in the public interest are included with [Appendix A](#).

41. The Commissioner will therefore be permitted to share information with the Charity Commission in circumstances where it has determined that it is reasonably necessary to do so in furtherance of one of those grounds outlined at paragraph 40. In doing so, the Commissioner will identify the function of the Charity Commission with which that information may assist, and assess whether that function could reasonably be achieved without access to the particular information in question.
42. If information to be disclosed by the Commissioner was received by her in the course of discharging her functions as a designated enforcer under the Enterprise Act 2002, any disclosure shall be made in accordance with the restrictions set out in Part 9 of that Act.
43. Additionally, section 54 of the Charities Act deals with disclosure to the Charity Commission generally and gives any relevant public authority the ability, at its discretion, to disclose information to the Charity Commission if the disclosure is made for the purposes of enabling or assisting the Charity Commission with the discharge of any of its functions. Any information received from the Commissioner by the Charity Commission, for the purpose of enabling its functions, will be deemed by the Charity Commission to have been received under this legislation.
44. Where information is to be disclosed by either party for law enforcement purposes under section 35(4) or (5) of the DPA 2018

then they will only do so in accordance with an appropriate policy document as outlined by section 42 of the DPA.

45. Where a request for information is received by either party under data protection laws or FOIA, the recipient of the request will seek the views of the other party as described in the FOIA section 45 Code of Practice, where the information being sought under the request includes information obtained from, or shared by, the other party. However the decision to disclose or withhold the information (and therefore any liability arising out of that decision) remains with the party in receipt of the request as Data Controller in respect of that data.

### **Method of exchange**

46. Both parties will ensure that all information shared is appropriately protected using the Government Security Classification (GSC) system as follows. The parties will disclose information via a secured data sharing platform or as mutually agreed by both parties. Appropriate communication or transportation arrangements suitable to the security classification of the information or communication, and where appropriate secure encryption, must be made for the transfer.
47. Both parties will ensure that all information shared is appropriately protected using the Government Security Classification (GSC) system as follows:
- Official – the majority of information that is created or processed by the public sector. This includes the sub set of information to be protected by Official – Sensitive
  - Secret – very sensitive information that justifies heightened protective measures to defend against determined and highly capable threat actors
  - Top Secret – the most sensitive information requiring the highest level of protection from the most serious threats.

48. Information shared through this Memorandum will attract a minimum protective marking under the Government Protective Marking System of OFFICIAL. This MoU relates to the exchange of information up to and including OFFICIAL SENSITIVE, and separate arrangements will be necessary for information marked as SECRET or TOP SECRET.

### **Confidentiality and data breach reporting**

49. Except where disclosure is required by law, including a court order, or is expressly permitted elsewhere in this Memorandum, a receiving Party shall treat the disclosing Party's information as confidential and safeguard it accordingly. If a Party wishes to use or rely on the disclosing Party's information in circumstances where it may be released or published as a result of such use or reliance it shall seek the prior written permission of the disclosing Party.
50. The parties may from time to time mark information disclosed to the each other as "for intelligence purposes only" ("Marked Information"). Marked Information may be used by the parties to inform their investigations and assist any information gathering. The parties may not publish, use or rely on Marked Information as the reason for any decision made or action taken on its matters without the supplying parties written permission. This is necessary in order to protect ongoing cases by the Commission, Commissioner or other public bodies.
51. Where one party has received information from the other, it will consult with the other party before passing the information to a third party or using the information in an enforcement proceeding or court case.
52. Subject to paragraphs 49 – 51, the Parties agree that the information disclosed between them is to be used by the receiving party only for the purposes of their statutory functions and as permitted by law. The prior written agreement of the originating party must be obtained before the disclosed information can be used for any other purpose unless the receiving party is required by law to use the information for another purpose.

53. In respect of any information other than that received by way of intelligence, the receiving Party might, in the case of court proceedings, be required to disclose some of this information at short notice to the court. As a consequence the receiving Party might, on an exceptional basis, be unable to obtain prior permission from the disclosing Party because of time constraints. In such cases, the receiving Party will bring the disclosing Party's interest in the information to the attention of the Court and will inform the disclosing Party of the disclosure retrospectively and without undue delay.
54. Where confidential material obtained from, or shared by, the disclosing party is wrongfully disclosed by the party holding the information, that party will bring this to the attention of the disclosing party without delay. This is in addition to obligations to report a personal data breach under the GDPR and/or DPA where personal data is contained in the information disclosed.
55. The parties shall, insofar as is lawful and reasonably practicable, cooperate with one another in respect of any internal, regulatory or ministerial investigation or enquiry which relates to information shared with one another or arises from this Memorandum.

### **Duration and review of the MoU**

56. The parties will monitor the operation of this MoU and will review it biennially.
57. Any minor changes to this memorandum identified between reviews may be agreed in writing between the parties.
58. Any issues arising in relation to this memorandum will be notified to the point of contact for each organisation.

**Key contacts**

59. The parties have both identified a key person who is responsible for managing this MoU:

60.

<b>Information Commissioner's Office</b>	<b>Charity Commission for England and Wales</b>
<div style="background-color: black; width: 100%; height: 80px; margin-bottom: 5px;"></div> <p>Address: Wycliffe House, Water Lane, Wilmslow, SK9 5AF</p>	<div style="background-color: black; width: 100%; height: 80px; margin-bottom: 5px;"></div> <p>Address: Redgrave Court Merton Road, Bootle, Merseyside L20 7HS Postal Address: PO BOX 211, Bootle L20 7YX</p>

61. Those individuals will maintain an open dialogue between each other in order to ensure that the MoU remains effective and fit for purpose. They will also seek to identify any difficulties in the working relationship, and proactively seek to minimise the same.

**Signatories**

<b>Andy White, Director Information Commissioner's Office</b>	<b>Michelle Russell, Director Charity Commission</b>
<div style="background-color: black; width: 100%; height: 40px; margin-bottom: 10px;"></div> <p>Date: 13.9.19</p>	<div style="background-color: black; width: 100%; height: 40px; margin-bottom: 10px;"></div> <p>Date: 28-8-19</p>

## **Appendix A**

### *Circumstances which may indicate the potential need to share information*

- a) If the Charity Commission receive a complaint, or intelligence, which appears to be relevant to the GDPR (including the UK GDPR), DPA, PECR or any of the other legislation regulated by the Commissioner (as outlined in paragraph 4 of the MoU), the Charity Commission may liaise with the Commissioner and refer the matter to her if appropriate.
- b) If the Charity Commission receive a Serious Incident Report from a charity relating to a personal data breach or similar, and in which it has not been explicitly stated that the Commissioner has been informed, the Commission may share details of the report with the Commissioner.
- c) If the Commissioner receives a report from a charity citing a reportable matter, the Commissioner may notify the Charity Commission of the incident.
- d) If the Commissioner moves to take regulatory action, including, but not limited, to a fine or prosecution, in respect of a registered charity the Commissioner may notify the Charity Commission at the earliest opportunity.
- e) If the Commissioner identifies matters (relating to the DPA, the GDPR or PECR; or other legislation as set out at paragraph 4 of the MoU) indicating poor governance, mismanagement or misconduct within a charity; or indicating misuse of charitable status, the Commissioner may notify the Charity Commission of the matter.
- f) If either party identifies any matter relevant to a charity's alleged misuse of personal information and that may result in media interest (regardless of whether it may result in regulatory action), it may be shared with the other party at the earliest opportunity.



- g) Draft Documents (such as consultation papers, guidance, briefings) that are relevant to and may impact on the other party's objectives and functions, should be shared, where appropriate (for comment) at an early stage.
  
- h) Any other regulatory or policy matters which may have significant implications for the other organisation.

## Appendix B

The Charity Commission’s powers include those listed below, the Charity Commission’s support powers are usually only exercised at the request of the charity.

<b>Protective Powers</b>	<b>Statutory reference</b>
Require a charity to change its name in certain specified circumstances	S42-45 CA 2011
Institute inquiries into the administration of a charity	S46 CA 2011 <sup>1</sup>
Call for documents and search records	S52-53 CA 2011
Suspend or remove any trustee, charity trustee, officer, agent or employee of a charity	S76, <sup>1</sup> 79, <sup>1</sup> 80(1), CA2011
Make a scheme for the administration of a charity	S79(2)(b) CA 2011 <sup>1</sup>
Appoint new trustees	S76(3)(b) CA 2011 <sup>1</sup> and S80(2) CA 2011
Vest charity property in the Official Custodian for Charities	S76(3)(c) CA 2011 <sup>1</sup>
Order individuals not to part with charity property without its approval (“freezing orders”)	S76(3)(d) CA 2011 <sup>1</sup>
Order individuals not to pay debts owed to the charity without its approval	S76(3)(e) CA 2011 <sup>1</sup>
Restrict transactions that can be entered into on behalf of a charity	S76(3)(f) CA 2011 <sup>1</sup>
Appoint an interim manager for a charity	S76(3)(g) CA 2011 <sup>1</sup>
Suspend or remove trustees etc from membership of a charity	S83 CA 2011 <sup>1</sup>
Give specific directions for protection of a charity	S84 CA 2011 <sup>1</sup>
Direct the application of charity property	S85 CA 2011 <sup>1</sup>
Give directions about dormant bank accounts	S107-109 CA 2011
Determine the membership of a charity	S111 CA 2011
Ensure the safekeeping of charity documents	S340 CA 2011
Enter premises and seize documents	S48-49 CA 2011 <sup>1</sup>
Exercise the same powers as the Attorney General with respect to taking legal proceedings, except for petitioning for the winding up of a charity	S114 CA 2011
Order a disqualified person to repay sums received from a charity while acting as charity trustee or trustee for the charity	S184(2)-(4) CA 2011

Disqualify trustees who are receiving remuneration by virtue of sections 73A CA 1993	S186 CA 2011
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Powers only exercisable pursuant to an inquiry under s.46

<b>Support powers</b>	<b>Statutory reference</b>
Authorise cy-près application of gifts belonging to unknown or disclaiming donors	S63-66 CA 2011
Make a scheme in relation to a charity governed by charter or by or under statute, subject to Order in Council	S68 CA 2011
Establish a scheme for the administration of a charity (including the alteration of purposes cy-près)	S69 (1)(a) CA 2011 (see also S62 and 67 CA 2011)
Appoint or remove trustees; remove officers or employees	S69 (1)(b) CA 2011
Vest or transfer property, or require or permit any person to call for or make any transfer of property or any payment	S69 (1)(c) CA 2011
Alter provisions in Acts of Parliament establishing or regulating a charity, subject to Parliamentary approval	S73 CA 2011
Establish common investment XXXXs and common deposit XXXXs	S96-103 CA 2011
Authorise dealings with charity property or other actions in the interests of the charity	S105 CA 2011
Authorise ex-gratia payments	S106 CA 2011
Give advice and guidance to a charity trustee or trustee for a charity	S110 CA 2011 (see also S15(2)-(3) CA 2011)
Authorise regulated amendments to memoranda and articles of charitable companies	S198 CA 2011 (as amended)
Grant a waiver to a person disqualified from acting as a charity trustee	S181 CA 2011
Relieve trustees, auditors etc from liability for breach of trust or duty	S191 CA 2011

New powers covering the following have recently come in to force as a result of the Charities Act 2016:

- extension of power to suspend any trustee, charity trustee, officer, agent or employee of the charity
- extension of power to remove any trustee, charity trustee, officer, agent or employee

- extension of power to disqualify any trustee, charity trustee, officer, agent or employee
- direct action not to be taken
- direct a charity winding up
- issue an official warning

## **Appendix C - Terminology**

### *Charity Commission*

#### **Misconduct**

We define misconduct to include any act which the person committing it knew (or ought to have known) was criminal, unlawful, or improper.

#### **Mismanagement**

We define mismanagement to include any act which may result in significant charitable resources being misused; in a charity's reputation being undermined; or in the people who benefit from the charity being put at risk.

#### **Inquiry**

If the Charity Commission considers that the charity is potentially at significant risk, it may open an inquiry under section 46 of the Charities Act 2011. The Charity Commission can open inquiries with regard to charities or a particular charity or class of charities. Some of its powers can only be used when an inquiry is open. More details can be found in the Charity Commission's Risk Framework:

<https://www.gov.uk/government/publications/risk-framework-charity-commission>