

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 9 September 2021

**Public Authority:** Charity Commission

**Address:** PO Box 211  
Bootle  
L20 7YX

#### **Decision (including any steps ordered)**

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1. The complainant has requested information associated with the governance of the Malvern Hills Conservators. The Charity Commission withheld the relevant information it holds under section 31(1)(g) of the FOIA (law enforcement), section 40(2) (personal data) and section 42 (legal professional privilege), with the public interest favouring maintaining the exemptions where relevant. The Charity Commission subsequently advised the Commissioner that it is no longer relying on the section 42 exemption.
2. The Commissioner's decision is as follows:
  - The Charity Commission is entitled to withhold the requested information under section 31(1)(g) of the FOIA, by reference to section 31(2)(f) and (g), and the public interest favours maintaining the exemption.
3. The Commissioner does not require the Charity Commission to take any remedial steps.

## Background

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4. In its submission to the Commissioner, the Charity Commission has provided the following background and context. The information which is the subject of the request below relates to a charity (the Malvern Hills Conservators) seeking to change its governing documents which consist of a number of Acts of Parliament.
5. Where a charity is governed by Act(s) of Parliament, the Charity Commission can institute changes to the charity's governing document by using its statutory power under section 73 Charities Act 2011 to make a scheme. The procedure to make a scheme under section 73 requires that once the Charity Commission settles a scheme, it is given effect by order of the Secretary of State for Culture, Media and Sport ('DCMS'). In this case the order must then be laid before both Houses of Parliament and is subject to annulment by a resolution of either House. This complex procedure necessarily involves liaison, discussion and agreement between the Charity Commission and the DCMS in order to satisfy the Minister that the settled scheme might be given effect by him making an order.
6. In 2018 representatives of the Charity Commission and DCMS met with the charity's representatives to discuss using section 73 to amend the governing documents. At this time, and on the limited evidence available prior to any consultation by the charity, the Charity Commission and DCMS agreed that section 73 would be the most appropriate method with which to pursue the governance changes proposed by the charity.
7. There is ongoing policy discussion between DCMS and the Charity Commission on the scope of section 73 Charities Act 2011; it is unclear which, if any, private rights might be affected by any scheme settled under section 73.
8. The charity concerned in this case has a particularly complicated constitution with rights of common affecting the land which it owns (the Malvern Hills) and precepting powers. The changes it proposes to make to its governing document may therefore engage private rights.
9. The Charity Commission has been engaged in long running discussions with DCMS regarding concerns about the extent to which a section 73 scheme could in fact be used to (i) repeal or otherwise consolidate the Acts of Parliament which make up the charity's governing documents and / or (ii) enable the reform or introduction of further powers in relation to the management of common land.

10. The Charity Commission says it has endeavoured to be as candid as it reasonably can with the charity about the nature of its discussions with DCMS and keeps the charity updated with progress on the matter. This is part of the Charity Commission's functions and to assist with proper case handling, which is discussed in more detail below.
11. In late 2019 and early 2020 during discussions with DCMS it became apparent that, because of uncertainty over the scope of section 73 Charities Act 2011 and the changes the charity wishes to make to its constitution, along with consultation responses to the charity's proposed changes, it would be more appropriate for the charity to pursue a private parliamentary Bill of Parliament to make the changes to its governance as proposed. This is for a number of reasons including because the scope of Parliament to make changes to the governing documents is much wider than that of the Charity Commission and because the controversial changes would then be subject to active Parliamentary scrutiny.
12. Before a charity can pursue a private Bill, it requires the Charity Commission to exercise one of its statutory functions under section 74 Charities Act 2011; to grant permission to spend money on pursuing the same. Pursuing a private Bill can be a costly process for a charity governed by Act(s) of Parliament. The news that the charity had been advised to pursue a section 74 consent for the same has been the subject of many complaints to the Charity Commission.
13. The Charity Commission understands that the proposals to amend the governing documents of the charity are highly controversial both within the beneficiary community and within the trustee board itself and, more broadly, amongst the affected community. The board of trustees in this case is fairly distinctive for a charity. This is because it is made up of members who are elected directly by the electorate in the parishes and wards that pay the precept. Members are nominated by local authorities and one member is nominated by the Church Commissioners. It is the Charity Commission's understanding that there are divisions within the trustee board which might be categorised as being between those trustees who are elected and those who are nominated. The Charity Commission has been engaged in a high number of complex complaints about the proposals since they were announced. The complaints have increased over time and take significant resource both at a legal and casework level, to respond to. The complaints tend to be from precept payers unhappy with the proposed governance changes. The Charity Commission answers all complaints as candidly as it can and explains its position and the position of the charity and its trustees and the legal framework within which it operates.

14. This case is still an active case and there has not yet been a decision by the charity trustees on how and when to pursue either a more restricted section 73 scheme (to address the issues outlined as related to the scope of section 73) or whether and when they will pursue a section 74 consent application.
15. Further detail on the relevant pieces of legislation that will be discussed below are given in the Appendix to this notice.

## **Request and response**

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16. On 15 July 2020 the complainant wrote to the Charity Commission and requested information in the following terms:

“On 11 March 2020 The Charity Commission for England and Wales issued a statement concerning their view that proposed changes in the governance of the Malvern Hills Conservators (Registration number 516804) should be handled via a private bill.

Please would the Charity Commission provide copies of their correspondence with Malvern Hills Conservators in 2019 and 2020 which gave rise to that statement together with any covering letter or email which accompanied that statement when it was provided to the Malvern Hills Conservators?”

17. The Charity Commission responded on 12 August 2020. It withheld the information it holds under section 31(1)(g), section 40(2) and section 42 of the FOIA. The Charity Commission considered that the public interest favoured maintaining the exemptions, where relevant.
18. The Charity Commission provided an internal review on 15 October 2020. It provided further detail about the public interest arguments associated with section 31 but upheld its original position.
19. Having reconsidered the situation as a result of the Commissioner’s investigation, the Charity Commission advised her on 20 August 2021 that it was no longer relying on the section 42 exemption.

## **Scope of the case**

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20. The complainant contacted the Commissioner on 5 November 2020 to complain about the way her request for information had been handled.
21. The Commissioner has considered whether the Charity Commission is entitled to rely on section 31(1)(g) of the FOIA to withhold the

requested information, and the balance of the public interest. If necessary, she will consider whether the Charity Commission can rely on the section 40(2) exemption.

## Reasons for decision

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### Section 31 – law enforcement

22. Under section 31(1)(g) of the FOIA, information which is not exempt from disclosure by virtue of section 30 (investigations and proceedings) is exempt information if its disclosure under the Act would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2).
23. The Commission has confirmed that it considers that the applicable purposes under subsection (2) are (f) and (g) – respectively the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration; and the purpose of protecting the property of charities from loss or misapplication.
24. The Charity Commission is withholding under section 31(1)(g) email correspondence it had with a Malvern Hills Trust representative; material that the Commissioner has reviewed.
25. In their request for an internal review the complainant disputed that releasing the requested information would deter people from raising concerns with the Charity Commission. The complainant suggested that the information did not concern regulation or compliance. She considered that the Charity Commission's argument was therefore so general that, if valid, it could be used to preclude releasing any information under any and all circumstances, which suggested that the FOIA does not apply to the Charity Commission.
26. The Commissioner will note here that that is not the case. A public authority needs to consider the circumstances at the time it receives a request for information, and up to the point it provides an internal review response. On occasion, as here, the circumstances may be such that the authority considers that the requested information should be withheld. But if an applicant were to request that same information six months or a year later, for example, the circumstances at that point may be such that the authority is content for that information to be disclosed. To repeat, the application of an exemption, and any related public interest considerations, are dependent on the circumstances at the time an authority receives a request.

27. However, the complainant raised three other arguments, namely that:

- the requested information is held in relation to the Charity Commission's power to "make schemes" not as part of its regulatory function
- the Charity Commission had not presented an argument or evidence releasing the information would deter those who voluntarily supply information; and
- the request does not relate to a complaint or to complainants so disclosing the information would not lead complainants to believe that the Charity Commission routinely discloses correspondence concerning them.

28. In its submission to the Commissioner, the Charity Commission has advised that the specific powers, objectives and functions which would, or would be likely to be prejudiced if the disputed information was disclosed fall under section 14, section 15, section 73 and section 74 of the Charities Act 2011. The Charity Commission has next provided the following discussion of the threshold of likelihood it is relying on, and why disclosure would or would be likely to prejudice the function the relevant sub-section of section 31 is designed to protect.

29. The Charity Commission has explained that the requested information relates to a number of different matters which can be grouped into particular categories. The first category is confidential and sensitive discussions between the "charity regulator" (which the Commissioner understands to be a reference to the Charity Commission) and DCMS regarding section 73 and section 74 in relation to this particular case and the Charity Commission's interpretation of the Charities Act 2011. This [interpretation] is not yet settled and is not in the public domain but a summary of it is shared with the charity in the information within scope of the request.

30. The Charity Commission says its interactions with DCMS relate to the functions under both section 31(2)(f) and section 31(2)(g) of the FOIA. The charity wishes to change its very complicated and complex set of governing documents. Charities governed by acts of parliament are rare and section 73 is not often engaged. The legal scope and position on section 73 is far from resolved and this case prompted a lengthy discussion amongst DCMS and the Charity Commission on the legality of the proposed action under section 73, and a more general discussion on the scope of the section.

31. The governing documents require updating for various reasons and the Charity Commission can facilitate this by engaging section 73 or section

74. In doing so it is protecting the charity against misconduct and mismanagement in the section 31(2)(f) sense, ensuring that it continues to have a relevant and functional governing document. If the charity does not have such a document, there may be a risk of accusations of mismanagement or misconduct. Furthermore, the Charity Commission says, the debate on section 73 goes to the heart of the section 31(2)(g) of the FOIA. If the charity pursues a section 73 scheme and is unable to make the changes as required and a section 74 Bill is the most appropriate option, it is important to establish this and share the reasoning with the charity. This is so that it and the trustees are protected from loss or misapplication of the charity's funds. The reputation of the charity is also considered an asset under charity law, and this remains a particular issue to be addressed in addition to issues around the proper expenditure of charity assets.
32. The Charity Commission goes on to explain that in fulfilling its statutorily mandated section 15(1)6 and section 15(5) functions in relation to liaison on section 73 with DCMS, the withheld information again relates to the section 31(2)(f) and (g) functions for the reasons outlined above. Without these frank and candid conversations the Charity Commission cannot enable the charity to move forward. Giving information or advice to the Minister (via his representatives at DCMS) on matters that are sensitive, controversial and complex, such as the section 73 issues, requires candid discussions between parties on subjects upon which views may not be final. As explained above, the very nature of section 73 requires that the Charity Commission and DCMS liaise and share legal opinions and information in a full and frank manner.
33. The Charity Commission says it was important to share summaries of these discussions and views with the trustees of the charity, as the charity is directly affected by these matters both in terms of governance but also because of associated costs implications. Disclosing this particular aspect of the correspondence would be of significant negative consequence to both the Charity Commission and DCMS and would prejudice the Charity Commission's free use of these functions. This is because it will be very difficult for the Charity Commission to fulfil its section 15(1)6 and section 15(5) functions if there is a risk that discussions of this type, in a very fact-specific case, might be shared. It follows that sharing limited summaries of those discussions with the charity, to aid its understanding and ensure the Charity Commission is enabling it to continue with its plans to change its governance arrangements (as per section 31(2)(f) and (g)), is necessary but that it would likely be prejudicial for those to enter the public domain. This is because the summaries are sensitive, candid and contain information that is not a settled view on a particular section of the Charities Act 2011. Disclosure may also therefore open the Charity Commission up to



an unnecessary risk of legal challenge before the matter has been properly determined.

34. The second category that the Charity Commission has identified is the discussion of the results of the consultation conducted by the charity, and the views of DCMS and the Charity Commission that were shared with the charity.
35. The Charity Commission has referred back to its argument with regard to the first category, above. Releasing the withheld information would likely be prejudicial because it would stifle the Charity Commission and DCMS in their ability to deal with highly fact-specific section 73/section 74 cases. Such cases are rare and require candid discussion about all the evidence submitted. The Charity Commission has restated that there is currently no settled position on the section 73 scope. Disclosing the information may be prejudicial to all parties concerned because it would unnecessarily confuse the matter further. Disclosure would further prejudice the Charity Commission's ability to carry out its function as required by section 15(1)6 and section 15(5) for the same reasons as above.
36. The third category the Charity Commission has identified is discussion with the charity around the reputational and cost implications of pursuing a section 74 private Bill rather than a section 73 scheme.
37. Again, the Charity Commission says, the purposes under section 31(2)(f) and section 31(2)(g) of the FOIA are relevant here. The Charity Commission's functions exercised under those purposes – its correspondence with the charity trustees on concerns around reputational and costs implications for the charity – are section 15(1)2, section 15(1)5 and section 15(2). In providing reassurance and information around costs and reputation the Charity Commission is facilitating the better administration of the charity, as well as promoting the effective use of the charity's resources. This is a Charity Commission function under its objectives at section 14.4. Through the public statement, the Charity Commission says it was fulfilling its section 14.5 objective in assisting the trustees to be accountable to their donors, beneficiaries and the general public by sharing developments related to the proposed governance changes. The correspondence ensures that in fulfilling the above functions the Charity Commission is protecting the charity against misconduct and mismanagement for section 31(2)(f) FOIA purposes, and section 31(2)(g) with regard to protecting the charity from loss or misapplication of its resources.
38. Finally, the Charity Commission says its ability to conduct casework, fulfil its regulatory objectives and functions and use its powers, requires it to be able to have candid, open and honest conversations with charity



trustees about their charity. These can be long running and complex conversations. Where a case is still open (as in this case), and potentially subject to an exercise of the Charity Commission's enabling powers, disclosure would likely have a prejudicial and chilling effect on both the Charity Commission and charity trustees more generally if communications were subject to scrutiny before a case is closed and a decision made.

39. The Charity Commission says its duties under public law require it to make unfettered decisions on cases. A decision in this case may be compromised if the information under consideration was not withheld, at least until the case is concluded.

*The Commissioner's conclusion*

40. The Commissioner accepts that, under section 14, 15, 73 and 74 of the Charities Act 2011, the Charity Commission has regulatory functions that concern protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration; and protecting the property of charities from loss or misapplication. The Commissioner has noted the complainant's points but, having reviewed the withheld information and considered the Charity Commission's reasoning, the Commissioner is satisfied that the information evidences the Charity Commission exercising both of those functions.
41. The Commissioner has next considered whether disclosing the disputed information would, or would be likely to, prejudice those functions. From its submission, the Commissioner understands the Charity Commission's position to be that disclosure would be likely to prejudice the exercise of its functions. As such, although not certain to occur, the likelihood of prejudice that the Charity Commission envisions occurring must nonetheless be real and significant.
42. The reasons why disclosure would be likely to prejudice the Charity Commission in its exercise of the above two functions can be summarised as being because, at the time of the request:
- the matter of the charity seeking to change its governance was a 'live' matter and remains so to date
  - no final decisions had been made at that time
  - frank and candid discussion on sensitive matters was necessary
  - disclosing the correspondence to the wider world could stifle such discussion, open the Charity Commission up to unnecessary legal challenge and generally confuse the situation unnecessarily; and
  - frustrate the Charity Commission in its ability to enable the charity in this case to reduce risks to its reputation and finances and

move forward.

43. The Commissioner is persuaded that disclosing the requested information while the substantive matter of the Malvern Hills Conservators' governance was still live would be likely to prejudice the Charity Commission's exercise of its functions. She disagrees with the complainant and considers that it is possible that individuals associated with that case, and other individuals and bodies in future cases, *could* be less likely to engage with the Charity Commission if they considered it possible that sensitive correspondence would be disclosed to the world at large under FOIA, while a case is live. Disclosure could also harm the Charity Commission's relationship with other bodies, such as DCMS. Finally, the Commissioner considers that dealing with any queries or challenges as a result of disclosing the information at the time of the request, when the matter in hand was still live, would be likely to hinder or frustrate the timely resolution of that matter, which could risk the charity's reputation and finances. All these possible consequences would be likely to prejudice the Charity Commission's exercise of the particular functions that it has, at the time of the request.
44. Having considered all the circumstances of this case, the Commissioner has therefore decided that at the time of the request the withheld information engaged the exemption under section 31(1)(g), by reference to subsection 31(2)(f) and subsection 31(2)(g). She has gone on to consider the public interest test.

### **Public interest test**

#### Public interest in disclosing the information

45. In their complaint to the Commissioner, the complainant has told her that her understanding is that the Malvern Hills Conservators were encouraged to apply for changes to their governance arrangements by the Charity Commission, who offered to support an application for a scheme under section 73. She says the Malvern Hills Conservators responded to this request positively, as they saw a section 73 scheme as being an inexpensive way of obtaining new and wide ranging powers. To date the Malvern Hills Conservators have spent a significant amount of money (a figure was provided to the Commissioner) on a proposed scheme to find that, at a late stage, the Charity Commission changed its position and no longer supported the changes under a section 73 scheme. Those expenses incurred by the Conservators fall largely on the precept payers of particular wards. The complainant says that further costs are inevitable if the Charity Commission's suggestion is followed ie that the Conservators should now seek a private bill.

46. The complainant argues that, even if the public interest is generally served by keeping discussions about section 73 schemes between charities and the Charity Commission confidential, in this case it must be in the public interest for the documents to be disclosed. This is because taxpayers' money has been used to further a scheme which is now unviable without further spending. The complainant considers that the public is entitled to know why discussions that lead to the significant expenditure of public money "did not result in a viable section 73 scheme". [The Commissioner notes that no decision had been made on that matter at the time of the request and at the date of this notice.] Although the Charity Commission has provided a statement for the charity, the complainant says that statement does not explain how its change of view came about. In her view, the information the complainant has requested is central to the public's understanding of how it is that its money has been spent on a set of proposals which now can only be implemented by means of further substantial expenditure of public money. The complainant argues that this matter raises serious concerns for the residents of Malvern; the precept payers are a major stakeholder in the Conservators, as they are the sole source of permanent funding.
47. The Charity Commission's refusal to release the requested information is, in the complainant's view, motivated by fear that its release will expose it to criticism on account of its "change of mind", rather than by the general principles the Charity Commission cited in its response to their request.
48. For its part, the Charity Commission has noted the following public interest arguments for disclosure:
- There is a public interest in disclosing information that holds the Charity Commission to account and increases transparency, accountability, public understanding and involvement regarding the performance of its functions.
  - It acknowledges that there is public interest in the general subject of the use of the Charity Commission's section 73/section 74 Charities Act 2011 powers and more generally how it exercises its section 14 objectives and section 15 functions.
  - The Charity Commission understands that there might be a public interest in presenting the "full picture" in this case so that the public has a better understanding of the reasoning behind the making of the statement in question, and its decision making around the use of our various objectives, functions and powers.

- There is a public interest in understanding how this well known and important charity is operating.

Public interest in maintaining the exemption

49. The Charity Commission has noted that this case ie the matter of the Conservators' governance, is still active. As such, it considers that it is in the public interest that it has space and time in which to fully consider its policy and casework options, to enable it to reach an impartial and appropriate decision, away from public interference.
50. The public interest in knowing how this charity – the Malvern Hills Conservators - is governed and operates in relation to the matter of amending its constitution is covered by the information that has been released in the public statement and the "very fulsome" information on the charity's website.
51. The Charity Commission says it understands the Commissioner views the existence of other means of scrutiny as irrelevant for public interest test purposes but notes that her published guidance goes on to say:

"Where other means have been used or are being pursued, this may go some way to satisfying the public interest that would otherwise be served by disclosure. If, for example, a report providing the conclusions or outcome of other means of scrutiny or regulation is publicly available, this may to some extent lessen the public interest in disclosing the information requested under FOIA. Furthermore, if the other investigation is ongoing, the public interest may be better served by allowing it to continue without interference, rather than disclosing information prematurely."

The Charity Commission therefore reiterates the points around the publicly issued statement and the fact that the case is still open and being worked on by the Charity Commission. Furthermore, as the case is still live, the Charity Commission understands that the trustees are yet to decide whether to proceed with section 73 or section 74 in any case.

52. In the Charity Commission's view, it is unclear how releasing the information will be for the public good as far as assisting its understanding of these issues and how it operates as regulator. The Charity Commission notes that this case is quite distinctive, as described above, and the public statement already issued covers what it hopes is a good, transparent explanation about the reasoning for the statement. The addition of the information which is the subject of the complaint is not likely to add anything of public interest. The information may in fact make the public understanding of this complex case and topics less clear, which cannot be in the public interest.

Balance of the public interest

53. The Charity Commission's press statement to which it has referred was published on the Malvern Hills Trust's website on 13 March 2020 ie the information in that statement was available to the complainant prior to her submitting her request. The Commissioner appreciates that a substantial sum of money had been spent on the matter of changing the Conservators' governance, at the point of the request. She appreciates too that the process of making a change to the governance arrangements may have been frustrating and of concern for some residents and interested parties. In such circumstances there is naturally a public interest in how decisions are being arrived at and why certain positions changed.
54. However, on balance the Commissioner finds that there was greater public interest in withholding the requested information at the time of the request. She agrees that the previously published statement provides an adequate degree of background and explanation as to the Charity Commission and DCMS's position, namely the move to a possible section 74 solution to the Conservators' governance, rather than the section 73 solution previously advised. The Commissioner considers that that information and other published information adequately addresses the local public interest in that matter – as the Charity Commission has said, the matter of the Conservators' governance is very specific and has limited wider public interest. As such, the Commissioner considers that, while the matter was still live and no final decision had been made there was a greater public interest in the Charity Commission being able to carry out its regulatory functions as efficiently and effectively as possible, in the interests of the charity concerned, and to maintain the confidence of its stakeholders - at the time of the request and in the future.
55. Because the Commissioner has found that the withheld information engages the exemption under section 31(1)(g) of the FOIA and the public interest favours maintaining this exemption, it has not been necessary to consider whether the section 40(2) exemption is also engaged.

## **Right of appeal**

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56. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
LEICESTER  
LE1 8DJ

Tel: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

57. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
58. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

## **Signed**

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## APPENDIX

### Relevant Legislation

The Charity Commission is governed by, and derives its powers from, Charities Act 2011 (as amended). The relevant sections of the 2011 Act are reproduced below.

#### **Section 14 The Commission's objectives**

The Commission has the following objectives—

1 *The public confidence objective*

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

2 *The public benefit objective*

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

3 *The compliance objective*

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

4 *The charitable resources objective*

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

5 *The accountability objective*

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

#### **Section 15 The Commission's general functions**

(1) The Commission has the following general functions—

1 Determining whether institutions are or are not charities.

2 Encouraging and facilitating the better administration of charities.

3 Identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement in the administration of charities.



- 4 Determining whether public collections certificates should be issued, and remain in force, in respect of public charitable collections.
  - 5 Obtaining, evaluating and disseminating information in connection with the performance of any of the Commission's functions or meeting any of its objectives.
  - 6 Giving information or advice, or making proposals, to any Minister of the Crown on matters relating to any of the Commission's functions or meeting any of its objectives.
- (2) The Commission may, in connection with its second general function, give such advice or guidance with respect to the administration of charities as it considers appropriate.
- (3) Any advice or guidance so given may relate to—
- (a) charities generally,
  - (b) any class of charities, or
  - (c) any particular charity,
- and may take such form, and be given in such manner, as the Commission considers appropriate.
- (4) The Commission's fifth general function includes (among other things) the maintenance of an accurate and up-to-date register of charities under sections 29 (the register) and 34 (removal of charities from register).
- (5) The Commission's sixth general function includes (among other things) complying, so far as is reasonably practicable, with any request made by a Minister of the Crown for information or advice on any matter relating to any of its functions.

### **Section 73 Powers to make schemes altering provision made by Acts, etc.**

- (1) If it appears to the Commission that a scheme should be established for the administration of a charity, but also—
- (a) that it is necessary or desirable for the scheme—
    - (i) to alter the provision made by an Act establishing or regulating the charity, or
    - (ii) to make any other provision which goes or might go beyond the powers exercisable by the Commission apart from this section, or
  - (b) that it is for any reason proper for the scheme to be subject to parliamentary review,

the Commission may (subject to subsection (7)) settle a scheme accordingly with a view to its being given effect under this section.

(2) A scheme settled by the Commission under this section may be given effect by order of the [\[F1](#)Secretary of State].

(3) Subject to subsections (4) and (6), an order under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) In the case of a scheme which goes beyond the powers exercisable apart from this section in altering a statutory provision contained in or having effect under any public general Act, no order may be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(5) Subject to subsection (6), any provision of a scheme brought into effect under this section may be modified or superseded by the court or the Commission as if it were a scheme brought into effect by order of the Commission under section 69.

(6) Where subsection (4) applies to a scheme, the order giving effect to it—

(a) may direct that the scheme must not be modified or superseded by a scheme brought into effect otherwise than under this section, and

(b) may also direct that subsection (4) is to apply to any scheme modifying or superseding the scheme to which the order gives effect.

(7) The Commission must not proceed under this section without the same application, and the same notice to the charity trustees, as would be required if the Commission was proceeding (without an order of the court) under section 69.

(8) But on any application for a scheme, or in a case where it acts by virtue of section 70(5) or (6), the Commission may proceed under this section or section 69 as appears to it appropriate.

## **Section 74 Restriction on expenditure on promoting Bills**

(1) No expenditure incurred in preparing or promoting a Bill in Parliament is to be defrayed without the consent of the court or the Commission out of any money applicable for the purposes of a charity.

(2) Subsection (1) applies regardless of anything in the trusts of a charity.