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## Introduction

### Introduction

The author's interest in the Commission's powers of removal arises from acting for a majority of the School Fee Planning Charities<sup>1</sup> from 1993 onwards. It appeared at the time that the Commission was not confident about its powers to remove these charities from the register. The author's subsequent involvement in the Charity Law Association's Working Party Review of the consultation document *Maintenance of an Accurate Register of Charities*, which was eventually published as RR6-*Maintenance of an Accurate Register of Charities*,<sup>2</sup> reinforced the view that this subject had received little academic or professional attention. This is surprising because a decision by the Commission that an institution is not a charity is just as important as a decision that an institution is a charity. Much has been written about charitable status in the context of registration but there is a dearth of research on removal from the register or the removal of charitable status.

### Basic propositions

There are five basic propositions.

First, the Commission's powers of removal are limited. It should rarely be the case that charities are removed from the register. If charities are removed too often then the public and the Government will lose confidence in the process.<sup>3</sup>

It is the need to maintain confidence in charities which underpins Lord Simmonds dictum that '*once a charity always a charity*'.<sup>4</sup> If an institution ceases to be a charity due to the passage of time or a change in social circumstances then it is argued<sup>5</sup> in this book that the appropriate course of action is a *cy-pres* scheme.<sup>6</sup> The principle that a charity never dies is subject to some

<sup>1</sup> [1996] Ch.Com.A.R. paras. 187–191.      <sup>2</sup> November 2000.

<sup>3</sup> See p. 7 of this chapter.      <sup>4</sup> *National Anti-Vivisection Society v. IRC* [1948] AC 31 at 74.

<sup>5</sup> Chapter 3, pp. 71–73.

<sup>6</sup> S. 13(1)(e)(ii) Charities Act 1993. A *cy-pres* scheme is a legal document made by the Commission which updates the purposes of a charity.

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exceptions but, for the reasons outlined above, it is important that they are limited.<sup>7</sup>

Second, there is a distinction between the governing instrument of a charity and its property.<sup>8</sup> The distinction is between form and substance. A charity's property can be schemed<sup>9</sup> for new charitable purposes where those purposes have become dated, leaving the governing instrument to be removed from the register. Whether property is held charitably will not always depend on the objects set out in the governing instrument. The intention of the donors will be paramount<sup>10</sup> and this may result in property being applied *cy-pres* even where the institution was never charitable.<sup>11</sup> The effect of removal, in such circumstances, will not be as drastic as might at first appear because the property will continue to be applied for charity and only the governing instrument removed from the register.

Third, the Commission has a problem of legality when removing charities because of its inability to make law in the field of charitable status. As a public body, it may not act outside its powers.<sup>12</sup> Its powers derive from the Court or legislation. There is no power in the Charities Act 1993, the Charities Act 2006 or any other enactments which authorises the Commission to judicially decide questions of charitable status. Its role is to register<sup>13</sup> charities and in doing so it must follow the general law but there are so few decisions of the Court and legislation that the Commission is forced into becoming a *de facto* law-maker.<sup>14</sup> Its dilemma is that its duty to obey the existing law clashes with its need to respond to social change so that charitable status does not become irrelevant. The theoretical need to follow decisions of the Court and legislation and the lack of such decisions and legislation to follow appears to have restrained the Commission from removing or attempting to remove too many charities from the register. The Charity Tribunal does not greatly assist in this respect as it too must follow the general law.<sup>15</sup> It will be shown in this book that, through necessity, the Commission is becoming more like a legislator than a regulator.<sup>16</sup>

Fourth, there is a need for greater clarity about the extent of the Commission's powers of removal. Related to this is the doubt surrounding the essential indicia of charitable status.<sup>17</sup> Logic dictates that what disqualifies an institution from being a charity is just as important as what qualifies it to be a charity.

Fifth, there is a need for charities removed from the register to have access to justice. Although this book shows that charities can rarely be removed from the register, Chapter 8 shows<sup>18</sup> that the appeal process is unfairly weighted in favour of the Commission. Removed charities meet obstacles of judicial review

<sup>7</sup> See pp. 4–7 of this chapter. <sup>8</sup> Chapter 5, pp. 104–5.

<sup>9</sup> S.13 Charities Act 1993. <sup>10</sup> Chapter 5, pp. 104–5. <sup>11</sup> Ibid.

<sup>12</sup> *Boddington v. British Transport Police* [1999] 2 AC 143 at 171 *per* Lord Steyn.

<sup>13</sup> S. 3 A(1) Charities Act 1993. <sup>14</sup> This is explained in Chapter 3, pp. 65–67.

<sup>15</sup> See Chapter 8, pp. 171–5. <sup>16</sup> Chapter 3, pp. 65–67.

<sup>17</sup> See Chapter 2, pp. 12–18. <sup>18</sup> Chapter 8, pp. 171–5.

and common-law remedies, and are also deterred by the high costs in appealing. This makes reform of the appeal system crucial.<sup>19</sup>

## Summary of the book

The extent of the Commission's powers of removal is presently unclear. Little research has been carried out in this area. This book seeks to clarify the position. One of the purposes of this book is to clarify the limits of the power in which the Commission could remove an institution from the register.

In Chapter 2 the essential indicia<sup>20</sup> of charitable status are analysed. Being a charity in law is a necessary requirement for registration<sup>21</sup> and a loss of one or more of the essential indicia will oblige the Commission to remove an institution from the register.<sup>22</sup> It is shown in this chapter that the essential indicia of charitable status are not clear and that this lack of clarity supports the basic proposition<sup>23</sup> that the Commission's powers of removal need clarification. The Commission cannot be confident about its powers of removal if it cannot be certain that an institution is not a charity.

In Chapter 3 it is shown that each of the grounds for removal under section 3 (4) of the Charities Act 1993 – '*no longer considers is a charity*'; has '*ceased to exist*' or '*does not operate*' – are limited.<sup>24</sup> Furthermore, where rectification of the register is concerned, it is argued<sup>25</sup> that institutions will retain their tax reliefs until the date of removal, except where they were never charitable or where they are removed because they have amended their 'trusts'.<sup>26</sup> It is argued that this interpretation further limits the effect of removal.

Chapter 4 applies three of the basic propositions<sup>27</sup> to controversial charities: the Commission's powers of removal are limited; the Commission can only legally remove charities from the register in limited circumstances; and its powers require clarification. These are charities connected to the state either through funding agreements or trusteeship,<sup>28</sup> schools which charge fees<sup>29</sup> and new religious movement charities.<sup>30</sup>

Chapter 5 points out<sup>31</sup> that a distinction needs to be made at the outset between the governing instrument of a charity and property held for charitable purposes. While a charity might be removed from the register, it does not necessarily mean that its property will be lost to charity. It is argued that it will rarely be the case that property will be lost to charity when the charity is removed from the register because charitable property will be applied *cy-pres*<sup>32</sup> for charitable purposes.

Chapter 6 explores the extent to which the Commission's powers of investigation lead to the removal of charities from the register under section 3(4) of the

<sup>19</sup> See Chapter 9.    <sup>20</sup> Chapter 2, pp. 12–18.    <sup>21</sup> See pp. 12–13 of this chapter.

<sup>22</sup> S.3(4) Charities Act 1993.    <sup>23</sup> Pp. 1–4 of this chapter.    <sup>24</sup> Chapter 3, pp. 45–50.

<sup>25</sup> Chapter 3, p. 52.    <sup>26</sup> S.3(5) Charities Act 1993.    <sup>27</sup> Pp. 1–4 of this chapter.

<sup>28</sup> Chapter 4, pp. 85–89.    <sup>29</sup> Chapter 4, pp. 89–93.    <sup>30</sup> Chapter 4, pp. 94–102.

<sup>31</sup> Pp. 1–4 of this chapter.    <sup>32</sup> Chapter 5, pp. 108–12.

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Charities Act 1993. The chapter illustrates, through documentary analysis of the Commission's published inquiry reports<sup>33</sup> that the Commission's powers of removal are limited and charities will rarely be removed from the register.

Chapter 7 looks at the Human Rights Act 1998 and the Charities Act 2006. Some of the provisions of these acts broaden the scope of charitable status, making it harder for the Commission to remove charities from the register. The implications for charities on the register are discussed. This chapter supports the basic proposition<sup>34</sup> that there is a problem of legality when interpreting the law of charitable status because the Commission has so few decisions of the court and legislation to follow. When interpreting the law in the light of the Human Rights Act 1998 the Commission must second-guess what the Court would decide or what Parliament intended. Although the Charities Act 2006 sets out a list of charitable purposes<sup>35</sup> it is not definitive and in time will date. The Charities Act 2006 does not solve the Commission's problem of legality because in these instances the Commission must try again to establish what might be the law.

Chapter 8 shows that legal appeal processes put the Commission in a position of strength when using its powers to remove charities from the register. This is in spite of the constraints of the Commission when considering grounds for removal.

Chapter 9 makes suggestions about reforming the law.

### Why the power to remove charities from the register is important

There are a number of reasons why the power to remove charities from the register is important. First, government policy on the delivery of public services by charities means that there is an increased need to ensure that the register is accurate and that those charities which do not qualify for registration are removed. Second, there is a need to ensure that tax reliefs are properly applied.<sup>36</sup> Third, there is a need to ensure that donors are not discouraged from giving. This will be discussed further in the next paragraph.<sup>37</sup> Fourth, the law is changing and it is important to understand the foundations of the law which underpin the new legislation so that there can be a correct analysis of the Commission's powers of removal. All of these reasons will now be explored.

### The importance of the charity sector in the delivery of public services

At present there is no definitive source of information about the charity sector as a whole.<sup>38</sup> However, for registered charities the definitive source is the Commission. The Commission records that there are 190,000 registered charities in England and

<sup>33</sup> Chapter 6, pp. 121–4.      <sup>34</sup> Pp. 1–4 of this chapter.      <sup>35</sup> S.2(2) Charities Act 2006.

<sup>36</sup> P. 12 of this chapter.      <sup>37</sup> Pp. 12–13 of this chapter.

<sup>38</sup> *The Role of The Voluntary and Community Sector in Service Delivery: A Cross Cutting Review*, September 2002, p. 9 ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).

Wales with £38 billion annual income representing 3.4 per cent of total GDP.<sup>39</sup> The number of registered charities is growing by about 1,800 per annum.<sup>40</sup>

It is estimated that there are between 500–700,000 organisations registered or unregistered in the charity not-for-profit sector.<sup>41</sup> The National Council for Voluntary Organisations (NCVO) estimated in July 2005 that there were 169,249 ‘general charities’ in the UK<sup>42</sup> which had a total income of £26.3 billion in 2003/4.<sup>43</sup> Two-thirds of the total income was generated by 3,200 organisations equating to 2 per cent of the sector.<sup>44</sup> The NCVO estimates that almost 38.1 per cent of the income of general charities in the UK in 2003/4 came from government.<sup>45</sup> For the first time, contract income from the public sector is now worth more than grant income from the same source.<sup>46</sup> As a source the only type of income to increase as a proportion of total income between 1995–2003/4 was the public sector from 28 per cent to 38.1 per cent of the sector’s income. To illustrate the growing importance of charities in this area it was estimated that between 1991 and 1995, contract income from government increased by over 50 per cent in real terms.<sup>47</sup>

The Government wants to enable the charity sector to become a more active partner in shaping state policy and the delivery of public services.<sup>48</sup> This was recently emphasised by the government’s White Paper *Higher standards, better schools for all more choice for parents and pupils*<sup>49</sup> which proposed the introduction of self-governing charitable foundation schools run as not-for-profit organisations, including charities now provided for by the Education and Inspections Act 2006. It is also illustrated by a Home Office document, *Working Together: Co-operation between Government and Faith Communities*,<sup>50</sup> which proposed that there should be a partnership between faith communities, including faith-based charities to deliver public services. In the health sector, the National Strategic Partnership between the NHS and charities means that charities will play a bigger role in supplementing the NHS.<sup>51</sup> The role of charities delivering public services is a theme that has been reiterated since the government’s compact with charities in 1998.<sup>52</sup>

<sup>39</sup> [2005/6] Ch. Com. A.R. p. 1.      <sup>40</sup> Ibid.      <sup>41</sup> Ibid. para 2.10.

<sup>42</sup> Wainwright, Clark, Griffith, Jochum and Wilding, *The UK Voluntary Sector Almanac 2006* (London: NCVO, 2006) p. 43.

<sup>43</sup> Ibid. p. 51.      <sup>44</sup> Ibid. p. 53.      <sup>45</sup> Ibid. p. 59.

<sup>46</sup> Ibid. p. 2. See also *The Future Role of the Third Sector in Social and Economic Regeneration: Final Report*, July 2007, Cm 7189.

<sup>47</sup> [2005/6] Ch. Com. A.R. p. 1.

<sup>48</sup> See *The Future Role of the Third Sector in Social and Economic Regeneration: Final Report*, July 2007, Cm 7189.

<sup>49</sup> Cm 6677 (2005). See [www.dfes.gov.uk](http://www.dfes.gov.uk). See para 2.11.

<sup>50</sup> Home Office Faith Communities Unit, February 2004.

<sup>51</sup> *New Agreement between NHS and Voluntary Sector*, 20 September 2004, ref number: 2004/0339. See [www.dh.gov.uk](http://www.dh.gov.uk).

<sup>52</sup> *Compact Getting It Right Together*, November 1998, Cm 4100. See also *The Role of the Voluntary and Community Sector in Service Delivery: A Cross Cutting Review*, September 2002 ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).

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An increasing reliance on charities to deliver public services can be traced back to the 1980s with the emergence of what has become known as the ‘contract culture’.<sup>53</sup> Prior to this charities relied on grant-aid for funding. Grants tended to represent a general contribution to a charity which was not linked to an identifiable service.<sup>54</sup> Now there is a purchaser / provider relationship in the delivery of public services.<sup>55</sup> Therefore, the government has an interest in ensuring that charities are *bona fide*, have good governance and are efficient. The statistics and government reports show that charities and not-for-profit organisations now have an important role in the delivery of public services. It is because charities are far more central to the delivery of public services that the accuracy of the register and the issue of removal from the register has gained in importance.

### Tax reliefs

The government will also have an interest in the removal of charities from the register because charities also receive government-funded tax reliefs which are available to both charities and their donors.<sup>56</sup> The value of tax reliefs to charities was estimated in 2003/4 as almost £3 billion.<sup>57</sup> Anything which damages the reputation of the charity sector and its regulation will not be good news for a government which relies so much on the charity sector to deliver public services.

### Donors

It is part of the government’s policy to encourage more people to give to charity.<sup>58</sup> Despite an increase in public funding to 38.1 per cent of the charity sector’s income, donations from the public in 2003/4 were 35.4 per cent.<sup>59</sup> Without such income the work of charities would be significantly restricted. An important source of information for potential donors is the register of charities.

<sup>53</sup> Morris, D., ‘Charities and the Contract Culture: Partners or Contractors? Law and Practice in Conflict’, Charity Law Unit, Liverpool University, 1999.

<sup>54</sup> Ibid.

<sup>55</sup> The implications arising from this relationship are explored in Morris, D., ‘Charities and the Contract Culture’. The contract culture in the field of health and social services is explored in R. Meakin, *Charity in the NHS: Policy and Practice*, 1<sup>st</sup> edn (Bristol: Jordans, 1998).

<sup>56</sup> Inland Revenue: information for charities. [www.inlandrevenue.gov.uk/stats/charities/menu.htm](http://www.inlandrevenue.gov.uk/stats/charities/menu.htm).

<sup>57</sup> See Wainwright, Clark, Griffith et al., *The UK Voluntary Sector Almanac 2006*, p. 43. For a commentary on charity tax reliefs see J. Kessler QC, *The Taxation of Charities*, 5<sup>th</sup> edn (2005).

<sup>58</sup> See *Getting Britain Giving: Inland Revenue Guidance Note for Charities* (2001) ([www.hmre.gov.uk](http://www.hmre.gov.uk)) and *The Giving Campaign* ([www.givingcampaign.org.uk](http://www.givingcampaign.org.uk)).

<sup>59</sup> Wainwright, Clark, Griffith, et al., *The UK Voluntary Sector Almanac 2006*, p. 61.

## Law reform

Following the Charities Act 2006<sup>60</sup> it is likely that the issue of removal will become more relevant. There are a few reasons for this. First is the abolition of the presumption of public benefit<sup>61</sup> in the case of the old first three heads of charity.<sup>62</sup> In addition, the Commission now has a duty to issue guidance on public benefit.<sup>63</sup> In doing so it will be obliged to follow the general law where there is little analysis of public benefit. This is partly because the court has rarely considered public benefit in respect of the old first three heads of charity because it has been presumed. Now that the Commission has to issue public benefit guidance, it will be forced to second-guess Parliament or the court.<sup>64</sup> This might lead to the removal of more charities from the register.

Second, the Charities Act 2006 provides for a Charity Tribunal.<sup>65</sup> Although the Tribunal must follow the general law because there are so few decisions by the Court or legislation on charitable status, the Charity Tribunal will have to second-guess the court in much the same way as the Commission. Decisions by the Charity Tribunal might lead to more charities being removed from the register if the Commission is prepared to test its powers generally.<sup>66</sup>

Therefore it is important that the foundations which underpin the law are clarified so that the law can be understood and the Charities Act 2006 is correctly interpreted and applied.<sup>67</sup>

<sup>60</sup> Prior to the Charities Act 2006 there was a *Review of the Register* which included an examination of the Commission's power of removal, and, prior to the publication of the Charities Bill [HL], the Strategy Unit Report *Private Action, Public Benefit A Review of Charities and the Wider Not-for-Profit Sector*; The Government response to the Strategy Unit Report: *Charities and Not-for-Profits: A Modern Legal Framework* (Home Office, 2003) and the Draft Charities Bill [2004]. Following the publication of the Draft Charities Bill a Joint Committee of the whole House published a report, *Report from the Joint Committee on the Draft Charities Bill*, HL Paper 167-I HC 660-I, 30 September 2004 and the Government's response, *Government's Response to the Committee's Report*, Cm 6440, 21 December 2004.

<sup>61</sup> See *National Anti-Vivisection Society v. IRC* [1948] AC 31 *per* Lord Simonds at pp. 66–67.

<sup>62</sup> S. 3(2) Charities Act 2006.

<sup>63</sup> S. 4(1) Charities Act 2006. To date the Commission have issued the following guidance: *Public Benefit – The Charity Commission's Approach* (January 2005), *Public Benefit – The Charity Commission's Position on how Public Benefit is Treated in the Charities Bill* (July 2005), *The Charity Commission's Approach to Public Benefit, Appendix to Parliamentary Briefing* (October 2006) and *Charities and Public Benefit: The Charity Commission's General Guidance on Public Benefit* (January 2008).

<sup>64</sup> See for example Chapter 2, pp. 34–42 and Chapter 4, pp. 94–95.

<sup>65</sup> S. 8 Charities Act 2006.

<sup>66</sup> See Chapter 8, pp. 171–5 and Chapter 4, pp. 86–87 for statements made by the Commission.

<sup>67</sup> See Chapter 7, pp. 126–8 *et seq.* for an examination of the changing face of charitable status following the Human Rights Act 1998 and the Charities Act 2006.



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## Introduction to the general law

Why is there a register of charities? What is the effect of registration and removal? What are the Commission's current powers of removal?

### The register of charities

Section 3 A (1) Charities Act 1993 places a duty on charities to register. The register was introduced by the Charities Act 1960. The idea behind the register was to provide information to the public and social workers so that charitable resources could be accessed for the benefit of those in need.<sup>68</sup> A secondary purpose was to enable the Commission when using its *cy-pres*<sup>69</sup> powers to alter the objects of obsolescent charities so that their funds could be put to better use.<sup>70</sup> Registration provides a conclusive presumption that an institution is charitable for all purposes other than rectification.<sup>71</sup>

Some charities are exempt<sup>72</sup> or excepted<sup>73</sup> from registration. Excepted charities may elect to be registered if they wish.<sup>74</sup> Charities which are exempt or excepted from registration and not registered cannot, of course, be removed from the register. However, the Inland Revenue might consult the Commission as to whether these institutions are charitable, and if the Commission advises that they are not then this might lead to the loss of tax reliefs. If this happens the practical effect will be the same as being removed from the register. The grounds for removal from the register, apart from the ground that the charity does not operate<sup>75</sup> will be relevant to the question of whether the institution is charitable. Therefore the book has a wider relevance than simply looking at the powers of removal from the register.

### The Commission's powers of removal

The relevant legislation is contained in the Charities Act 1993. The power to remove charities<sup>76</sup> from the register is contained in section 3(4) Charities Act 1993:

The Commission shall remove from the register –

- (a) any institution which it no longer considers is a charity, and
- (b) any charity which has ceased to exist or does not operate.

<sup>68</sup> Nathan, *The Charities Act 1960*, 1<sup>st</sup> edn (London: Butterworths, 1962) p. 20.

<sup>69</sup> S. 13 Charities Act 1993. <sup>70</sup> Nathan, *The Charities Act 1960*, p. 20.

<sup>71</sup> S. 4(1) Charities Act 1993. <sup>72</sup> S. 3 A(2), Schedule 2 Charities Act 1993.

<sup>73</sup> S. 3 A(2)(b) & (c) Charities Act 1993. <sup>74</sup> S. 3 A(6) Charities Act 1993.

<sup>75</sup> S. 3 (4) Charities Act 1993.

<sup>76</sup> For a summary of the grounds for removal see pp. 4–7 of this chapter.



The wording ‘no longer considers is a charity’ would include the following grounds for removal:

- (A) The institution never had the essential indicia of charitable status. It is submitted in this book that the essential indicia of charitable status are being subject to a legal obligation to carry out charitable purposes,<sup>77</sup> being within jurisdiction,<sup>78</sup> having charitable purposes,<sup>79</sup> which includes the requirement of public benefit,<sup>80</sup> and being viable in the sense that if the charitable purposes are impossible from the outset that a general, rather than a specific, charitable intention is expressed by the settlor so that the property is applied *cy-pres*.<sup>81</sup> It is arguable that a lack of independence from the state is part of the essential indicia of charitable status, although this argument is not supported in this book.<sup>82</sup>
- (B) Sham charities.<sup>83</sup>
- (C) Where there is a change in the law that confirms that the institution was never charitable.<sup>84</sup>
- (D) Charities registered by the Commission under a mistaken understanding of the law.<sup>85</sup>
- (E) Change in the trusts.<sup>86</sup> This would happen when the trustees exercised a power of amendment to cause the loss of one or more of the essential indicia of charitable status.<sup>87</sup>

‘Ceased to exist’ includes the exercise of a power of dissolution in the case of incorporated and unincorporated charities<sup>88</sup> where the property is exhausted by being expended on the charitable purposes in the case of unincorporated charities,<sup>89</sup> or is transferred,<sup>90</sup> but arguably not where it is transferred by way of a scheme<sup>91</sup> of the Commission, reverts,<sup>92</sup> where the charity comes to an end in the case of a time charity,<sup>93</sup> or where the objects are dependant on a particular institution which closes, or a particular property which is no longer available.<sup>94</sup>

It is submitted<sup>95</sup> that a charity ‘does not operate’ if it does not qualify for registration<sup>96</sup> because its gross income does not exceed £5,000 a year<sup>97</sup> or £100,000 in the case of an excepted charity<sup>98</sup> and yet still legally exists. It is arguable that the Commission can use its power to remove charities from the register where they do not carry out charitable activities. However, this argument is not supported in this book.<sup>99</sup>

<sup>77</sup> Chapter 2, pp. 14–18.

<sup>80</sup> Chapter 2, pp. 34–42.

<sup>83</sup> Chapter 3, pp. 54–57.

<sup>86</sup> Chapter 3, pp. 73–75.

<sup>89</sup> Chapter 3, pp. 75–83.

<sup>95</sup> Chapter 3, pp. 50–52.

<sup>78</sup> Chapter 2, p. 23.

<sup>81</sup> Chapter 2, p. 42.

<sup>84</sup> Chapter 3, pp. 57–59.

<sup>87</sup> Chapter 2, pp. 12–18.

<sup>90</sup> Ibid.

<sup>96</sup> S. 3 A (1) Charities Act 1993.

<sup>97</sup> S. 3 A(2)(d) Charities Act 1993.

<sup>99</sup> See Chapter 3, pp. 50–52 for arguments rejecting this interpretation.

<sup>79</sup> Chapter 2, pp. 23–31.

<sup>82</sup> Chapter 2, p. 43.

<sup>85</sup> Chapter 3, pp. 59–65.

<sup>88</sup> Chapter 2, pp. 20–22.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

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Under Section 4(2) Charities Act 1993:

*Any person who is or may be affected by the registration of an institution as a charity may, on the ground that it is not a charity ... apply to the Commission for it to be removed from the register*

Section 4(1) Charities Act 1993 refers to rectification of the register but does not set out grounds for rectification.<sup>100</sup>

The Commission also has protective powers under sections 18 and 19 Charities Act 1993 which might lead it to use its power of removal under section 3(4) Charities Act 1993. These powers are discussed in Chapter 6.<sup>101</sup> They include, *inter alia*, the appointment and removal of trustees and the appointment of an interim manager. Sometimes, after using its power to institute an inquiry<sup>102</sup> and to call for documents and search records,<sup>103</sup> the Commission may conclude that a charity should be removed from the register because it has 'ceased to exist'<sup>104</sup> or 'does not operate',<sup>105</sup> without the need to exercise any of its protective powers under sections 18 and 19 Charities Act 1993.

### General approach to writing the book

There is surprisingly little written about the removal of charities from the register. There have been three spurts of interest by legal practitioners and academics. First, when the charitable status of the Gun Clubs was examined by the Commission;<sup>106</sup> second, when the *Review of the Register* was announced<sup>107</sup> and third, following the publication of the Strategy Unit Report<sup>108</sup> and the Charities Act 2006 which led to much discussion on the effect of the abolition of the presumption of public benefit, some of it consisting of serious analysis, but most of it flowing from superficial commentary from various national newspapers.<sup>109</sup>

This book mainly draws on the common law of charitable status. This sometimes involves an exploration of what is charitable which, in turn, leads to the deduction of what is not charitable. Decisions of the Commission and its publications<sup>110</sup> (such as the *Review of the Register*) are critically examined against relevant legislation and the common law. The author's experience as a lawyer at the Commission between 1988 and 1993, and subsequently in private

<sup>100</sup> Chapter 3, p. 52.      <sup>101</sup> Chapter 6, pp. 114–16.

<sup>102</sup> S. 8 Charities Act 1993.      <sup>103</sup> S. 9 Charities Act 1993.

<sup>104</sup> S. 3(4) Charities Act 1993. See Chapter 3, pp. 75–83 and Chapter 6, p. 123.

<sup>105</sup> S. 3(4) Charities Act 1993. See Chapter 3, pp. 50–52 and Chapter 6, pp. 121–3.

<sup>106</sup> See Chapter 3, pp. 60–65.      <sup>107</sup> See Chapter 3, pp. 65–67.

<sup>108</sup> Cabinet Office, *Private Action, Public Benefit: A Review of Charities and the Wider Not-for-Profit Sector* (2002).

<sup>109</sup> See Chapter 4, p. 89. The focus has mainly been on fee-paying independent schools with charitable status.

<sup>110</sup> These can be accessed on the Commission's website: [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk).