



MCCARTHY
DENNING

CHARITY LAW
ASSOCIATION

EX GRATIA
PAYMENTS

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Ex Gratia Payment – Current Definitions

Charities Act 2011

The charity trustees—

- (a) [...] have no power to take the action, but
- (b) in all the circumstances regard themselves as being under a moral obligation to take it.

Charity Commission

The trustees:

- believe that they are under a moral obligation to make the payment; but
- are not under any legal obligation to make the payment; and
- cannot justify the payment as being in the interests of the charity.

Charities Act 2011 – Section 106

- (1) Subject to subsection (5), the Commission may by order exercise the same power as is exercisable by the Attorney General to authorise the charity trustees of a charity to take any action falling within subsection (2)(a) or (b) in a case where the charity trustees—
 - (a) (apart from this section) have no power to take the action, but
 - (b) in all the circumstances regard themselves as being under a moral obligation to take it.
- (2) The actions are—
 - (a) making any application of property of the charity, or
 - (b) waiving to any extent, on behalf of the charity, its entitlement to receive any property.
- (3) The power conferred on the Commission by subsection (1) is exercisable by the Commission under the supervision of, and in accordance with such directions as may be given by, the Attorney General.

Charities Act 2011 – Section 106 (cont)

(4) Any such directions may in particular require the Commission, in such circumstances as are specified in the directions—

(a) to refrain from exercising the power conferred by subsection (1), or

(b) to consult the Attorney General before exercising it.

(5) Where—

(a) an application is made to the Commission for it to exercise the power conferred by subsection (1) in a case where it is not precluded from doing so by any such directions, but

(b) the Commission considers that it would nevertheless be desirable for the application to be entertained by the Attorney General rather than by the Commission, the Commission must refer the application to the Attorney General.

(6) It is hereby declared that where—

(a) an application is made to the Commission as mentioned in subsection (5)(a), and

(b) the Commission determines the application by refusing to authorise charity trustees to take any action falling within subsection (2)(a) or (b),

that refusal does not preclude the Attorney General, on an application subsequently made to the Attorney General by the charity trustees, from authorising them to take that action.

Ex Gratia Payment – New Definitions

Charities Act 2011

The charity trustees—

- (a) [...] have no power to take the action, but
- (b) in all the circumstances **regard themselves** as being under a moral obligation to take it.

Charities Act 2022

The charity trustees—

- (a) [...] have no power to take the action, but
- (b) in all the circumstances **could reasonably be regarded** as being under a moral obligation to take it.

Charities Act 2011 – New Section 331A

- (1) The charity trustees of a charity may take any action falling within subsection [\(2\)\(a\)](#) or [\(b\)](#) if the conditions in subsection [\(3\)](#) are met.
- (2) The actions are—
 - (a) making any application of property of the charity, or
 - (b) waiving to any extent, on behalf of the charity, its entitlement to receive any property.
- (3) The conditions are—
 - (a) that the value of the property does not exceed the relevant threshold,
 - (b) that the charity trustees have no power to take the action apart from this section or by virtue of section 106, and
 - (c) that in all the circumstances the charity trustees could reasonably be regarded as being under a moral obligation to take the action.

Charities Act 2011 – New Section 331A

- (4) The power conferred by this section may be restricted or excluded by the trusts of the charity.
- (5) In relation to a charity established by (or whose purposes or functions are set out in) legislation, the power conferred by this section is not disapplied only because the legislation concerned prohibits application of property of the charity otherwise than as set out in the legislation.
- (6) For the purposes of subsection [\(3\)\(a\)](#)—
 - (a) if the charity's gross income in its last financial year did not exceed £25,000, the relevant threshold is £1,000;
 - (b) if the charity's gross income in its last financial year exceeded £25,000 but not £250,000, the relevant threshold is £2,500;
 - (c) if the charity's gross income in its last financial year exceeded £250,000 but not £1 million, the relevant threshold is £10,000;
 - (d) if the charity's gross income in its last financial year exceeded £1 million, the relevant threshold is £20,000.

Charities Act 2011 – New Section 331A

(7) In subsection [\(5\)](#) “legislation” means—

- (a) an Act of Parliament;
- (b) an Act or Measure of Senedd Cymru;
- (c) subordinate legislation (within the meaning of the Interpretation Act 1978) made under an Act of Parliament;
- (d) an instrument made under an Act or Measure of Senedd Cymru; or
- (e) a Measure of the Church Assembly or of the General Synod of the Church of England.

Charities Act 2011 – New Section 331B

Power to alter sums specified in s.331A

The Secretary of State may by regulations amend section 331A(6) (relevant income thresholds) by substituting a different sum for any sum for the time being specified in that provision.

Charities Act 2022 – 106 Amendment

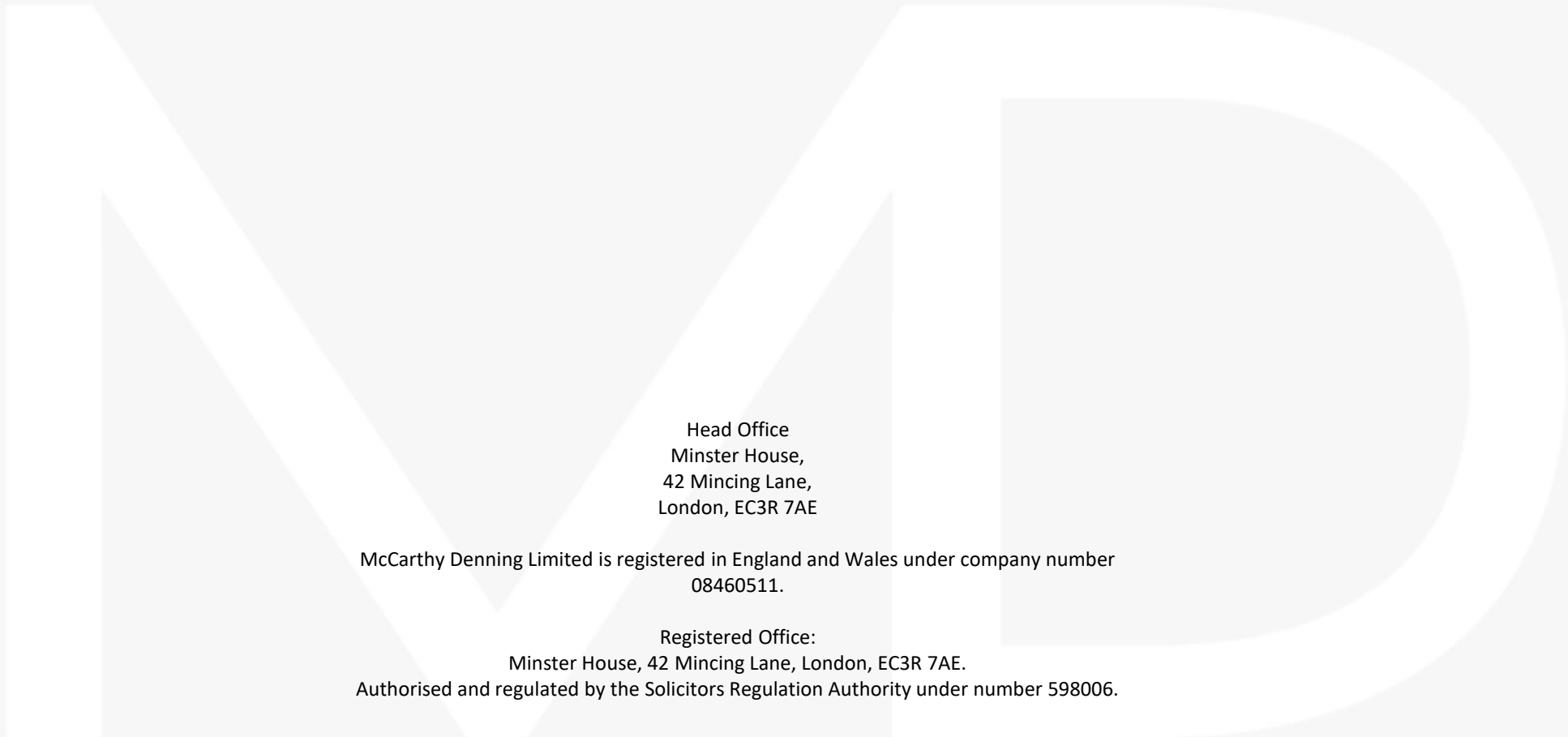
For subsection (1) substitute—

- (1) The Commission, the Attorney General or the court may authorise the charity trustees of a charity to take any action falling within subsection (2)(a) or (b) in a case where the charity trustees—
- (a) (apart from by virtue of this section or section 331A) have no power to take the action, but
 - (b) in all the circumstances could reasonably be regarded as being under a moral obligation to take it.
- (1A) In relation to a charity established by (or whose purposes or functions are set out in) legislation, subsection (1) is not disapplied only because the legislation concerned prohibits application of property of the charity otherwise than as set out in the legislation.
- (1B) In subsection (1A) “legislation” means—
- (a) an Act of Parliament;
 - (b) an Act or Measure of Senedd Cymru;
 - (c) subordinate legislation (within the meaning of the Interpretation Act 1978) made under an Act of Parliament;
 - (d) an instrument made under an Act or Measure of Senedd Cymru; or
 - (e) a Measure of the Church Assembly or of the General Synod of the Church of England.”;

In subsection (3), after second “Commission” insert “by order and”.



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