



Charities Act 1993

1993 CHAPTER 10

PART IV

APPLICATION OF PROPERTY CY-PRÈS AND ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT AND COMMISSIONERS

Extended powers of court and variation of charters

13 Occasions for applying property cy-près

- (1) Subject to subsection (2) below, the circumstances in which the original purposes of a charitable gift can be altered to allow the property given or part of it to be applied cy-près shall be as follows—
- (a) where the original purposes, in whole or in part—
 - (i) have been as far as may be fulfilled; or
 - (ii) cannot be carried out, or not according to the directions given and to the spirit of the gift; or
 - (b) where the original purposes provide a use for part only of the property available by virtue of the gift; or
 - (c) where the property available by virtue of the gift and other property applicable for similar purposes can be more effectively used in conjunction, and to that end can suitably, regard being had to the spirit of the gift, be made applicable to common purposes; or
 - (d) where the original purposes were laid down by reference to an area which then was but has since ceased to be a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason since ceased to be suitable, regard being had to the spirit of the gift, or to be practical in administering the gift; or
 - (e) where the original purposes, in whole or in part, have, since they were laid down,—
 - (i) been adequately provided for by other means; or

Status: This is the original version (as it was originally enacted).

- (ii) ceased, as being useless or harmful to the community or for other reasons, to be in law charitable; or
 - (iii) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regard being had to the spirit of the gift.
- (2) Subsection (1) above shall not affect the conditions which must be satisfied in order that property given for charitable purposes may be applied cy-près except in so far as those conditions require a failure of the original purposes.
- (3) References in the foregoing subsections to the original purposes of a gift shall be construed, where the application of the property given has been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being applicable.
- (4) Without prejudice to the power to make schemes in circumstances falling within subsection (1) above, the court may by scheme made under the court's jurisdiction with respect to charities, in any case where the purposes for which the property is held are laid down by reference to any such area as is mentioned in the first column in Schedule 3 to this Act, provide for enlarging the area to any such area as is mentioned in the second column in the same entry in that Schedule.
- (5) It is hereby declared that a trust for charitable purposes places a trustee under a duty, where the case permits and requires the property or some part of it to be applied cy-près, to secure its effective use for charity by taking steps to enable it to be so applied.

14 Application cy-près of gifts of donors unknown or disclaiming

- (1) Property given for specific charitable purposes which fail shall be applicable cy-près as if given for charitable purposes generally, where it belongs—
- (a) to a donor who after—
 - (i) the prescribed advertisements and inquiries have been published and made, and
 - (ii) the prescribed period beginning with the publication of those advertisements has expired,
 cannot be identified or cannot be found; or
 - (b) to a donor who has executed a disclaimer in the prescribed form of his right to have the property returned.
- (2) Where the prescribed advertisements and inquiries have been published and made by or on behalf of trustees with respect to any such property, the trustees shall not be liable to any person in respect of the property if no claim by him to be interested in it is received by them before the expiry of the period mentioned in subsection (1)(a)(ii) above.
- (3) For the purposes of this section property shall be conclusively presumed (without any advertisement or inquiry) to belong to donors who cannot be identified, in so far as it consists—
- (a) of the proceeds of cash collections made by means of collecting boxes or by other means not adapted for distinguishing one gift from another; or
 - (b) of the proceeds of any lottery, competition, entertainment, sale or similar money-raising activity, after allowing for property given to provide prizes or articles for sale or otherwise to enable the activity to be undertaken.

- (4) The court may by order direct that property not falling within subsection (3) above shall for the purposes of this section be treated (without any advertisement or inquiry) as belonging to donors who cannot be identified where it appears to the court either—
- (a) that it would be unreasonable, having regard to the amounts likely to be returned to the donors, to incur expense with a view to returning the property; or
 - (b) that it would be unreasonable, having regard to the nature, circumstances and amounts of the gifts, and to the lapse of time since the gifts were made, for the donors to expect the property to be returned.
- (5) Where property is applied *cy-près* by virtue of this section, the donor shall be deemed to have parted with all his interest at the time when the gift was made; but where property is so applied as belonging to donors who cannot be identified or cannot be found, and is not so applied by virtue of subsection (3) or (4) above—
- (a) the scheme shall specify the total amount of that property; and
 - (b) the donor of any part of that amount shall be entitled, if he makes a claim not later than six months after the date on which the scheme is made, to recover from the charity for which the property is applied a sum equal to that part, less any expenses properly incurred by the charity trustees after that date in connection with claims relating to his gift; and
 - (c) the scheme may include directions as to the provision to be made for meeting any such claim.
- (6) Where—
- (a) any sum is, in accordance with any such directions, set aside for meeting any such claims, but
 - (b) the aggregate amount of any such claims actually made exceeds the relevant amount,
- then, if the Commissioners so direct, each of the donors in question shall be entitled only to such proportion of the relevant amount as the amount of his claim bears to the aggregate amount referred to in paragraph (b) above; and for this purpose “the relevant amount” means the amount of the sum so set aside after deduction of any expenses properly incurred by the charity trustees in connection with claims relating to the donors' gifts.
- (7) For the purposes of this section, charitable purposes shall be deemed to “fail” where any difficulty in applying property to those purposes makes that property or the part not applicable *cy-près* available to be returned to the donors.
- (8) In this section “prescribed” means prescribed by regulations made by the Commissioners; and such regulations may, as respects the advertisements which are to be published for the purposes of subsection (1)(a) above, make provision as to the form and content of such advertisements as well as the manner in which they are to be published.
- (9) Any regulations made by the Commissioners under this section shall be published by the Commissioners in such manner as they think fit.
- (10) In this section, except in so far as the context otherwise requires, references to a donor include persons claiming through or under the original donor, and references to property given include the property for the time being representing the property originally given or property derived from it.

- (11) This section shall apply to property given for charitable purposes, notwithstanding that it was so given before the commencement of this Act.

15 Charities governed by charter, or by or under statute

- (1) Where a Royal charter establishing or regulating a body corporate is amendable by the grant and acceptance of a further charter, a scheme relating to the body corporate or to the administration of property held by the body (including a scheme for the cy-près application of any such property) may be made by the court under the court's jurisdiction with respect to charities notwithstanding that the scheme cannot take effect without the alteration of the charter, but shall be so framed that the scheme, or such part of it as cannot take effect without the alteration of the charter, does not purport to come into operation unless or until Her Majesty thinks fit to amend the charter in such manner as will permit the scheme or that part of it to have effect.
- (2) Where under the court's jurisdiction with respect to charities or the corresponding jurisdiction of a court in Northern Ireland, or under powers conferred by this Act or by any Northern Ireland legislation relating to charities, a scheme is made with respect to a body corporate, and it appears to Her Majesty expedient, having regard to the scheme, to amend any Royal charter relating to that body, Her Majesty may, on the application of that body, amend the charter accordingly by Order in Council in any way in which the charter could be amended by the grant and acceptance of a further charter; and any such Order in Council may be revoked or varied in like manner as the charter it amends.
- (3) The jurisdiction of the court with respect to charities shall not be excluded or restricted in the case of a charity of any description mentioned in Schedule 4 to this Act by the operation of the enactments or instruments there mentioned in relation to that description, and a scheme established for any such charity may modify or supersede in relation to it the provision made by any such enactment or instrument as if made by a scheme of the court, and may also make any such provision as is authorised by that Schedule.