



Charities Act 1993

1993 CHAPTER 10

PART IV

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

Powers of Commissioners to make schemes and act for protection of charities etc.

16 Concurrent jurisdiction with High Court for certain purposes

- (1) Subject to the provisions of this Act, the Commissioners may by order exercise the same jurisdiction and powers as are exercisable by the High Court in charity proceedings for the following purposes—
 - (a) establishing a scheme for the administration of a charity;
 - (b) appointing, discharging or removing a charity trustee or trustee for a charity, or removing an officer or employee;
 - (c) vesting or transferring property, or requiring or entitling any person to call for or make any transfer of property or any payment.
- (2) Where the court directs a scheme for the administration of a charity to be established, the court may by order refer the matter to the Commissioners for them to prepare or settle a scheme in accordance with such directions (if any) as the court sees fit to give, and any such order may provide for the scheme to be put into effect by order of the Commissioners as if prepared under subsection (1) above and without any further order of the court.
- (3) The Commissioners shall not have jurisdiction under this section to try or determine the title at law or in equity to any property as between a charity or trustee for a charity and a person holding or claiming the property or an interest in it adversely to the charity, or to try or determine any question as to the existence or extent of any charge or trust.
- (4) Subject to the following subsections, the Commissioners shall not exercise their jurisdiction under this section as respects any charity, except—

- (a) on the application of the charity; or
 - (b) on an order of the court under subsection (2) above; or
 - (c) in the case of a charity other than an exempt charity, on the application of the Attorney General.
- (5) In the case of a charity which is not an exempt charity and whose income from all sources does not in aggregate exceed £500 a year, the Commissioners may exercise their jurisdiction under this section on the application—
- (a) of any one or more of the charity trustees; or
 - (b) of any person interested in the charity; or
 - (c) of any two or more inhabitants of the area of the charity if it is a local charity.
- (6) Where in the case of a charity, other than an exempt charity, the Commissioners are satisfied that the charity trustees ought in the interests of the charity to apply for a scheme, but have unreasonably refused or neglected to do so and the Commissioners have given the charity trustees an opportunity to make representations to them, the Commissioners may proceed as if an application for a scheme had been made by the charity but the Commissioners shall not have power in a case where they act by virtue of this subsection to alter the purposes of a charity, unless forty years have elapsed from the date of its foundation.
- (7) Where—
- (a) a charity cannot apply to the Commissioners for a scheme by reason of any vacancy among the charity trustees or the absence or incapacity of any of them, but
 - (b) such an application is made by such number of the charity trustees as the Commissioners consider appropriate in the circumstances of the case,
- the Commissioners may nevertheless proceed as if the application were an application made by the charity.
- (8) The Commissioners may on the application of any charity trustee or trustee for a charity exercise their jurisdiction under this section for the purpose of discharging him from his trusteeship.
- (9) Before exercising any jurisdiction under this section otherwise than on an order of the court, the Commissioners shall give notice of their intention to do so to each of the charity trustees, except any that cannot be found or has no known address in the United Kingdom or who is party or privy to an application for the exercise of the jurisdiction; and any such notice may be given by post, and, if given by post, may be addressed to the recipient's last known address in the United Kingdom.
- (10) The Commissioners shall not exercise their jurisdiction under this section in any case (not referred to them by order of the court) which, by reason of its contentious character, or of any special question of law or of fact which it may involve, or for other reasons, the Commissioners may consider more fit to be adjudicated on by the court.
- (11) An appeal against any order of the Commissioners under this section may be brought in the High Court by the Attorney General.
- (12) An appeal against any order of the Commissioners under this section may also, at any time within the three months beginning with the day following that on which the order is published, be brought in the High Court by the charity or any of the charity trustees, or by any person removed from any office or employment by the order (unless he

is removed with the concurrence of the charity trustees or with the approval of the special visitor, if any, of the charity).

- (13) No appeal shall be brought under subsection (12) above except with a certificate of the Commissioners that it is a proper case for an appeal or with the leave of one of the judges of the High Court attached to the Chancery Division.
- (14) Where an order of the Commissioners under this section establishes a scheme for the administration of a charity, any person interested in the charity shall have the like right of appeal under subsection (12) above as a charity trustee, and so also, in the case of a charity which is a local charity in any area, shall any two or more inhabitants of the area and the council of any parish or (in Wales) any community comprising the area or any part of it.
- (15) If the Secretary of State thinks it expedient to do so—
- (a) in consequence of changes in the value of money, or
 - (b) with a view to increasing the number of charities in respect of which the Commissioners may exercise their jurisdiction under this section in accordance with subsection (5) above,

he may by order amend that subsection by substituting a different sum for the sum for the time being specified there.

17 Further powers to make schemes or alter application of charitable property

- (1) Where it appears to the Commissioners that a scheme should be established for the administration of a charity, but also that it is necessary or desirable for the scheme to alter the provision made by an Act of Parliament establishing or regulating the charity or to make any other provision which goes or might go beyond the powers exercisable by them apart from this section, or that it is for any reason proper for the scheme to be subject to parliamentary review, then (subject to subsection (6) below) the Commissioners may settle a scheme accordingly with a view to its being given effect under this section.
- (2) A scheme settled by the Commissioners under this section may be given effect by order of the Secretary of State, and a draft of the order shall be laid before Parliament.
- (3) Without prejudice to the operation of section 6 of the Statutory Instruments Act 1946 in other cases, 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 of Parliament, the order shall not be made unless the draft has been approved by resolution of each House of Parliament.
- (4) Subject to subsection (5) below, any provision of a scheme brought into effect under this section may be modified or superseded by the court or the Commissioners as if it were a scheme brought into effect by order of the Commissioners under section 16 above.
- (5) Where subsection (3) above applies to a scheme, the order giving effect to it may direct that the scheme shall not be modified or superseded by a scheme brought into effect otherwise than under this section, and may also direct that that subsection shall apply to any scheme modifying or superseding the scheme to which the order gives effect.
- (6) The Commissioners shall not proceed under this section without the like application and the like notice to the charity trustees, as would be required if they were proceeding (without an order of the court) under section 16 above; but on any application for a

scheme, or in a case where they act by virtue of subsection (6) or (7) of that section, the Commissioners may proceed under this section or that section as appears to them appropriate.

- (7) Notwithstanding anything in the trusts of a charity, no expenditure incurred in preparing or promoting a Bill in Parliament shall without the consent of the court or the Commissioners be defrayed out of any moneys applicable for the purposes of a charity but this subsection shall not apply in the case of an exempt charity.
- (8) Where the Commissioners are satisfied—
- (a) that the whole of the income of a charity cannot in existing circumstances be effectively applied for the purposes of the charity; and
 - (b) that, if those circumstances continue, a scheme might be made for applying the surplus cy-près; and
 - (c) that it is for any reason not yet desirable to make such a scheme;
- then the Commissioners may by order authorise the charity trustees at their discretion (but subject to any conditions imposed by the order) to apply any accrued or accruing income for any purposes for which it might be made applicable by such a scheme, and any application authorised by the order shall be deemed to be within the purposes of the charity.
- (9) An order under subsection (8) above shall not extend to more than £300 out of income accrued before the date of the order, nor to income accruing more than three years after that date, nor to more than £100 out of the income accruing in any of those three years.

18 Power to act for protection of charities

- (1) Where, at any time after they have instituted an inquiry under section 8 above with respect to any charity, the Commissioners are satisfied—
- (a) that there is or has been any misconduct or mismanagement in the administration of the charity; or
 - (b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity,
- the Commissioners may of their own motion do one or more of the following things—
- (i) by order suspend any trustee, charity trustee, officer, agent or employee of the charity from the exercise of his office or employment pending consideration being given to his removal (whether under this section or otherwise);
 - (ii) by order appoint such number of additional charity trustees as they consider necessary for the proper administration of the charity;
 - (iii) by order vest any property held by or in trust for the charity in the official custodian, or require the persons in whom any such property is vested to transfer it to him, or appoint any person to transfer any such property to him;
 - (iv) order any person who holds any property on behalf of the charity, or of any trustee for it, not to part with the property without the approval of the Commissioners;
 - (v) order any debtor of the charity not to make any payment in or towards the discharge of his liability to the charity without the approval of the Commissioners;

- (vi) by order restrict (notwithstanding anything in the trusts of the charity) the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the charity without the approval of the Commissioners;
 - (vii) by order appoint (in accordance with section 19 below) a receiver and manager in respect of the property and affairs of the charity.
- (2) Where, at any time after they have instituted an inquiry under section 8 above with respect to any charity, the Commissioners are satisfied—
 - (a) that there is or has been any misconduct or mismanagement in the administration of the charity; and
 - (b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity,the Commissioners may of their own motion do either or both of the following things—
 - (i) by order remove any trustee, charity trustee, officer, agent or employee of the charity who has been responsible for or privy to the misconduct or mismanagement or has by his conduct contributed to it or facilitated it;
 - (ii) by order establish a scheme for the administration of the charity.
- (3) The references in subsection (1) or (2) above to misconduct or mismanagement shall (notwithstanding anything in the trusts of the charity) extend to the employment for the remuneration or reward of persons acting in the affairs of the charity, or for other administrative purposes, of sums which are excessive in relation to the property which is or is likely to be applied or applicable for the purposes of the charity.
- (4) The Commissioners may also remove a charity trustee by order made of their own motion—
 - (a) where, within the last five years, the trustee—
 - (i) having previously been adjudged bankrupt or had his estate sequestrated, has been discharged, or
 - (ii) having previously made a composition or arrangement with, or granted a trust deed for, his creditors, has been discharged in respect of it;
 - (b) where the trustee is a corporation in liquidation;
 - (c) where the trustee is incapable of acting by reason of mental disorder within the meaning of the Mental Health Act 1983;
 - (d) where the trustee has not acted, and will not declare his willingness or unwillingness to act;
 - (e) where the trustee is outside England and Wales or cannot be found or does not act, and his absence or failure to act impedes the proper administration of the charity.
- (5) The Commissioners may by order made of their own motion appoint a person to be a charity trustee—
 - (a) in place of a charity trustee removed by them under this section or otherwise;
 - (b) where there are no charity trustees, or where by reason of vacancies in their number or the absence or incapacity of any of their number the charity cannot apply for the appointment;

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- (c) where there is a single charity trustee, not being a corporation aggregate, and the Commissioners are of opinion that it is necessary to increase the number for the proper administration of the charity;
 - (d) where the Commissioners are of opinion that it is necessary for the proper administration of the charity to have an additional charity trustee because one of the existing charity trustees who ought nevertheless to remain a charity trustee either cannot be found or does not act or is outside England and Wales.
- (6) The powers of the Commissioners under this section to remove or appoint charity trustees of their own motion shall include power to make any such order with respect to the vesting in or transfer to the charity trustees of any property as the Commissioners could make on the removal or appointment of a charity trustee by them under section 16 above.
- (7) Any order under this section for the removal or appointment of a charity trustee or trustee for a charity, or for the vesting or transfer of any property, shall be of the like effect as an order made under section 16 above.
- (8) Subject to subsection (9) below, subsections (11) to (13) of section 16 above shall apply to orders under this section as they apply to orders under that section.
- (9) The requirement to obtain any such certificate or leave as is mentioned in section 16(13) above shall not apply to—
 - (a) an appeal by a charity or any of the charity trustees of a charity against an order under subsection (1)(vii) above appointing a receiver and manager in respect of the charity's property and affairs, or
 - (b) an appeal by a person against an order under subsection (2)(i) or (4)(a) above removing him from his office or employment.
- (10) Subsection (14) of section 16 above shall apply to an order under this section which establishes a scheme for the administration of a charity as it applies to such an order under that section.
- (11) The power of the Commissioners to make an order under subsection (1)(i) above shall not be exercisable so as to suspend any person from the exercise of his office or employment for a period of more than twelve months; but (without prejudice to the generality of section 89(1) below), any such order made in the case of any person may make provision as respects the period of his suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him and, in the case of a charity trustee, for adjusting any rules governing the proceedings of the charity trustees to take account of the reduction in the number capable of acting.
- (12) Before exercising any jurisdiction under this section otherwise than by virtue of subsection (1) above, the Commissioners shall give notice of their intention to do so to each of the charity trustees, except any that cannot be found or has no known address in the United Kingdom; and any such notice may be given by post and, if given by post, may be addressed to the recipient's last known address in the United Kingdom.
- (13) The Commissioners shall, at such intervals as they think fit, review any order made by them under paragraph (i), or any of paragraphs (iii) to (vii), of subsection (1) above; and, if on any such review it appears to them that it would be appropriate to discharge the order in whole or in part, they shall so discharge it (whether subject to any savings or other transitional provisions or not).

- (14) If any person contravenes an order under subsection (1)(iv), (v) or (vi) above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (15) Subsection (14) above shall not be taken to preclude the bringing of proceedings for breach of trust against any charity trustee or trustee for a charity in respect of a contravention of an order under subsection (1)(iv) or (vi) above (whether proceedings in respect of the contravention are brought against him under subsection (14) above or not).
- (16) This section shall not apply to an exempt charity.

19 Supplementary provisions relating to receiver and manager appointed for a charity

- (1) The Commissioners may under section 18(1)(vii) above appoint to be receiver and manager in respect of the property and affairs of a charity such person (other than an officer or employee of theirs) as they think fit.
- (2) Without prejudice to the generality of section 89(1) below, any order made by the Commissioners under section 18(1)(vii) above may make provision with respect to the functions to be discharged by the receiver and manager appointed by the order; and those functions shall be discharged by him under the supervision of the Commissioners.
- (3) In connection with the discharge of those functions any such order may provide—
- (a) for the receiver and manager appointed by the order to have such powers and duties of the charity trustees of the charity concerned (whether arising under this Act or otherwise) as are specified in the order;
 - (b) for any powers or duties exercisable or falling to be performed by the receiver and manager by virtue of paragraph (a) above to be exercisable or performed by him to the exclusion of those trustees.
- (4) Where a person has been appointed receiver and manager by any such order—
- (a) section 29 below shall apply to him and to his functions as a person so appointed as it applies to a charity trustee of the charity concerned and to his duties as such; and
 - (b) the Commissioners may apply to the High Court for directions in relation to any particular matter arising in connection with the discharge of those functions.
- (5) The High Court may on an application under subsection (4)(b) above—
- (a) give such directions, or
 - (b) make such orders declaring the rights of any persons (whether before the court or not),
- as it thinks just; and the costs of any such application shall be paid by the charity concerned.
- (6) Regulations made by the Secretary of State may make provision with respect to—
- (a) the appointment and removal of persons appointed in accordance with this section;
 - (b) the remuneration of such persons out of the income of the charities concerned;
 - (c) the making of reports to the Commissioners by such persons.

- (7) Regulations under subsection (6) above may, in particular, authorise the Commissioners—
- (a) to require security for the due discharge of his functions to be given by a person so appointed;
 - (b) to determine the amount of such a person's remuneration;
 - (c) to disallow any amount of remuneration in such circumstances as are prescribed by the regulations.

20 Publicity for proceedings under ss. 16 to 18

- (1) The Commissioners shall not make any order under this Act to establish a scheme for the administration of a charity, or submit such a scheme to the court or the Secretary of State for an order giving it effect, unless not less than one month previously there has been given public notice of their proposals, inviting representations to be made to them within a time specified in the notice, being not less than one month from the date of such notice, and, in the case of a scheme relating to a local charity, other than an ecclesiastical charity, in a parish or (in Wales) a community, a draft of the scheme has been communicated to the parish or community council or, in the case of a parish not having a council, to the chairman of the parish meeting.
- (2) The Commissioners shall not make any order under this Act to appoint, discharge or remove a charity trustee or trustee for a charity (other than the official custodian), unless not less than one month previously there has been given the like public notice as is required by subsection (1) above for an order establishing a scheme but this subsection shall not apply in the case of—
 - (a) an order under section 18(1)(ii) above; or
 - (b) an order discharging or removing a trustee if the Commissioners are of opinion that it is unnecessary and not in his interest to give publicity to the proposal to discharge or remove him.
- (3) Before the Commissioners make an order under this Act to remove without his consent a charity trustee or trustee for a charity, or an officer, agent or employee of a charity, the Commissioners shall, unless he cannot be found or has no known address in the United Kingdom, give him not less than one month's notice of their proposal, inviting representations to be made to them within a time specified in the notice.
- (4) Where notice is given of any proposals as required by subsections (1) to (3) above, the Commissioners shall take into consideration any representations made to them about the proposals within the time specified in the notice, and may (without further notice) proceed with the proposals either without modification or with such modifications as appear to them to be desirable.
- (5) Where the Commissioners make an order which is subject to appeal under subsection (12) of section 16 above the order shall be published either by giving public notice of it or by giving notice of it to all persons entitled to appeal against it under that subsection, as the Commissioners think fit.
- (6) Where the Commissioners make an order under this Act to establish a scheme for the administration of a charity, a copy of the order shall, for not less than one month after the order is published, be available for public inspection at all reasonable times at the Commissioners' office and also at some convenient place in the area of the charity, if it is a local charity.

- (7) Any notice to be given under this section of any proposals or order shall give such particulars of the proposals or order, or such directions for obtaining information about them, as the Commissioners think sufficient and appropriate, and any public notice shall be given in such manner as they think sufficient and appropriate.
- (8) Any notice to be given under this section, other than a public notice, may be given by post and, if given by post, may be addressed to the recipient's last known address in the United Kingdom.