



Charities Act (Northern Ireland) 1964

1964 CHAPTER 33

PART II

APPLICATION OF PROPERTY CY-PRÈS, IMPERFECT TRUSTS, ETC.

EXTENSION OF CY-PRÈS POWERS

22 Occasions for applying property cy-près.

- (1) Subject to subsection (2), 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 by other means; or

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- (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) 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) In authorising property comprised in a charitable gift to be applied cy-près, the Court or the Ministry shall have power to alter—
- (a) the purposes for which the property given may be applied; and
 - (b) the provisions and conditions governing the application of the property for those purposes;
- so as to secure that the property is applied as beneficially as is possible, consistently with the spirit of the gift.
- (4) In ascertaining the spirit of a gift for the purpose of subsection (1) or (3) the Court or the Ministry may take into account the conduct, and any habits or actions, of the donor and any written or oral declarations made by him at any time in relation to the gift.
- (5) References in subsections (1) and (2) 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.
- (6) 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.

23 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 such advertisements and inquiries as are reasonable, cannot be identified or cannot be found; or
 - (b) to a donor who has executed a written disclaimer of his right to have the property returned.
- (2) 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.
- (3) The Court or the Ministry may direct that property not falling within subsection (2) 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 or, as the case may be, the Ministry either—

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- (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 amount of the gifts, and to the lapse of time since the gifts were made, for the donors to expect the property to be returned.
- (4) 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 (2) or (3)—
- (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 trustees of the charity 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.
- (5) For the purposes of this section, charitable purposes shall be taken 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.
- (6) 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.
- (7) This section shall apply to property given for charitable purposes, notwithstanding that it was so given before the commencement of this Act

IMPERFECT TRUSTS

24 Gifts for mixed purposes.

- (1) Where—
- (a) property is given for purposes so described that, consistently with the terms of the gift the property could all be used for charitable purposes but could equally well be used wholly or partly for purposes which are not charitable; and
 - (b) the gift would, but for this section, be invalid;
- the gift shall have effect as a gift for such charitable purposes as may be determined by a scheme made in accordance with subsection (2) by the Court or, if the value of the property comprised in the gift does not exceed^{F1} £50,000], by the Ministry.
- (2) Where the terms of a gift and the surrounding circumstances appear to the Court or, as the case may be, the Ministry to show a predominant intention on the part of the donor to further a particular charitable purpose the Court or, as the case may be, the Ministry shall, in making a scheme under subsection (1), have regard, so far as practicable, to that intention.

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- (3) Where—
- (a) property is disposed of by way of successive gifts so that a gift is dependent upon a prior gift; and
 - (b) the prior gift has been made the subject of a scheme under this section;
- any gift dependent upon the prior gift shall have the like effect as it would have had if the prior gift had at all times been for the purposes determined by that scheme.
- (4) Section 13 shall, subject to any necessary modifications, apply to any scheme made by the Ministry under subsection (1) as it applies to a cy-près scheme made by the Ministry.

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COMMON INVESTMENT FUNDS

25 Common investment schemes.

- (1) The Court or the Ministry may by order make and bring into effect schemes (in this section referred as “common investment schemes”) for the establishment of common investment funds under trusts which provide—
 - (a) for property transferred to the fund by or on behalf of a charity participating in the scheme to be invested under the control of trustees appointed to manage the fund; and
 - (b) for the participating charities to be entitled (subject to the provisions of the scheme) to the capital and income of the fund in shares determined by reference to the amount or value of the property transferred to it by or on behalf of each of them and to the value of the fund at the time of the transfers.
- (2) The Court or the Ministry may make a common investment scheme on the application of any two or more charities.
- (3) A common investment scheme may be made in terms admitting any charity to participate or may restrict the right to participate in any manner.
- (4) A common investment scheme may make provision for, and for all matters connected with, the establishment, investment, management and winding up of the common investment fund.
- (5) A common investment scheme may in particular include provision—
 - (a) for remunerating persons appointed trustees to hold or manage the fund or any part of it, with or without provision authorising a person to receive the remuneration notwithstanding that he is also a trustee of or for a participating charity;
 - (b) for restricting the size of the fund;
 - (c) for regulating as to time, amount or otherwise the right to transfer property to or withdraw it from the fund;
 - (d) for enabling sums to be advanced out of the fund by way of loan to a participating charity pending the withdrawal of property from the fund by the charity;

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- (e) for enabling income to be withheld from distributions with a view to avoiding fluctuations in the amounts distributed, and generally for regulating distributions of income;
 - (f) for enabling moneys to be borrowed temporarily for the purpose of meeting payments to be made out of the fund;
 - (g) for enabling questions arising under the scheme as to the right of a charity to participate, or as to the rights of participating charities, or as to any other matter, to be conclusively determined by the decision of the trustees managing the fund or in any other manner;
 - (h) for regulating the accounts and information to be supplied to participating charities.
- (6) A common investment scheme, in addition to the provision for property to be transferred to the fund on the basis that the participating charity shall be entitled to a share in the capital and income of the fund, may include provision for enabling sums to be deposited by or on behalf of a charity on the basis that (subject to the provisions of the scheme) the charity shall be entitled to repayment of the sums deposited and to interest thereon at a rate determined by or under the scheme.
- (7) Where a common investment scheme makes any such provision as is authorised by subsection (6), the scheme shall also provide for excluding from the amount of capital and income to be shared between charities participating otherwise than by way of deposit such amounts (not exceeding the amounts properly attributable to the making of deposits) as are from time to time reasonably required in respect of the liabilities of the fund for the repayment of deposits and for the interest on deposits, including amounts required by way of reserve.
- (8) The Ministry may by a common investment scheme provide for investment of any property belonging to a charity of which the Ministry is the trustee, and the common investment fund established under this subsection shall be known as the “central investment fund” .
- (9) The Ministry, on the application of a charity, may admit the charity to participate in the central investment fund on such terms and subject to such conditions as are specified in the scheme establishing that fund.
- (10) The Ministry shall appoint a committee of persons who have special experience of investment and finance or of the administration of trusts to advise it with respect to the investment of the central investment fund.
- (11) Except in so far as a common investment scheme provides to the contrary, the rights under it of a participating charity shall not be capable of being assigned or charged, nor shall any trustee or other person concerned in the management of the common investment fund be required or entitled to take account of any trust or other equity affecting a participating charity or its property or rights.
- (12) The powers of investment of every charity shall include power to participate in common investment schemes, unless power to do so is excluded by a provision in the trusts of the charity specifically referring to common investment schemes.
- (13) A body corporate in which a common investment fund is vested may, as trustee of the fund, hold any estate in land, without restriction as to area, notwithstanding anything contained in any enactment or in any instrument under which it is incorporated.

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- (14) Notwithstanding that the assets comprised in a common investment fund include any estate in land, a share in the capital and income of a fund shall not be taken to be an estate in land.
- (15) A common investment fund shall be deemed for all purposes to be a charity.
- Subs. 16 rep. by 1986 c. 60*
- (17) [^{F2}Subsection (15)] shall apply not only to common investment funds established under the powers conferred by this section but also to any similar fund established for the exclusive benefit of charities by or under any enactment relating to any particular charities or class of charity.

F2 1986 c.60

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