



# Charities Act 2011

## 2011 CHAPTER 25

### PART 6

#### CY-PRÈS POWERS AND ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT AND COMMISSION

##### *Powers of Commission to make schemes etc.*

#### **69 Commission's concurrent jurisdiction with High Court for certain purposes**

- (1) The Commission 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) Subsection (1) is subject to the provisions of this Act.
- (3) If the court directs a scheme for the administration of a charity to be established—
  - (a) the court may by order refer the matter to the Commission for it to prepare or settle a scheme in accordance with such directions (if any) as the court sees fit to give, and
  - (b) any such order may provide for the scheme to be put into effect by order of the Commission as if prepared under subsection (1) and without any further order of the court.

#### **70 Restrictions on Commission's concurrent jurisdiction**

- (1) The Commission does not have jurisdiction under section 69 to try or determine—
  - (a) the title at law or in equity to any property as between—
    - (i) a charity or trustee for a charity, and

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*Status: This is the original version (as it was originally enacted).*

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- (ii) a person holding or claiming the property or an interest in it adversely to the charity, or
  - (b) any question as to the existence or extent of any charge or trust.
- (2) Subject to the following subsections, the Commission must not exercise its jurisdiction under section 69 as respects any charity except—
- (a) on the application of the charity,
  - (b) on an order of the court under section 69(3), or
  - (c) on the application of the Attorney General.
- (3) In the case of a charity whose gross income does not exceed £500 a year, the Commission may exercise its jurisdiction under section 69 on the application of—
- (a) any one or more of the charity trustees,
  - (b) any person interested in the charity, or
  - (c) any two or more inhabitants of the area of the charity if it is a local charity.
- (4) Subsection (5) applies where in the case of a charity, other than an exempt charity, the Commission—
- (a) is satisfied that the charity trustees—
    - (i) ought in the interests of the charity to apply for a scheme, but
    - (ii) have unreasonably refused or neglected to do so, and
  - (b) has given the charity trustees an opportunity to make representations to it.
- (5) The Commission—
- (a) may proceed as if an application for a scheme had been made by the charity, but
  - (b) may not, where it acts by virtue of this subsection, alter the purposes of a charity unless 40 years have elapsed from the date of the charity's foundation.
- (6) Where—
- (a) a charity cannot apply to the Commission for a scheme because 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 Commission considers appropriate in the circumstances of the case,
- the Commission may nevertheless proceed as if the application were an application made by the charity.
- (7) The Commission may on the application of any charity trustee or trustee for a charity exercise its jurisdiction under section 69 for the purpose of discharging the applicant from trusteeship.
- (8) The Commission must not exercise its jurisdiction under section 69 in any case (not referred to it by order of the court) which—
- (a) because of its contentious character, or any special question of law or of fact which it may involve, or
  - (b) for other reasons,
- the Commission may consider more fit to be adjudicated on by the court.

**71 Exercise of Commission's concurrent jurisdiction: notice**

- (1) Before exercising any jurisdiction under section 69 otherwise than on an order of the court, the Commission must give notice of its intention to do so to each of the charity trustees except any—
  - (a) that cannot be found or has no known address in the United Kingdom, or
  - (b) who is party or privy to an application for the exercise of the jurisdiction.
- (2) Any such notice—
  - (a) may be given by post, and
  - (b) if given by post, may be addressed to the recipient's last known address in the United Kingdom.

**72 Power to alter sum specified in s.70(3)**

If the Minister 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 Commission may exercise its jurisdiction under section 69 in accordance with section 70(3),

the Minister may by order amend section 70(3) by substituting a different sum for the sum for the time being specified there.

**73 Powers to make schemes altering provision made by Acts, etc.**

- (1) If it appears to the Commission that a scheme should be established for the administration of a charity, but also—
  - (a) that it is necessary or desirable for the scheme—
    - (i) to alter the provision made by an Act establishing or regulating the charity, or
    - (ii) to make any other provision which goes or might go beyond the powers exercisable by the Commission apart from this section, or
  - (b) that it is for any reason proper for the scheme to be subject to parliamentary review,the Commission may (subject to subsection (7)) settle a scheme accordingly with a view to its being given effect under this section.
- (2) A scheme settled by the Commission under this section may be given effect by order of the Minister.
- (3) Subject to subsections (4) and (6), an order under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) 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, no order may be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (5) Subject to subsection (6), any provision of a scheme brought into effect under this section may be modified or superseded by the court or the Commission as if it were a scheme brought into effect by order of the Commission under section 69.
- (6) Where subsection (4) applies to a scheme, the order giving effect to it—

- (a) may direct that the scheme must not be modified or superseded by a scheme brought into effect otherwise than under this section, and
  - (b) may also direct that subsection (4) is to apply to any scheme modifying or superseding the scheme to which the order gives effect.
- (7) The Commission must not proceed under this section without the same application, and the same notice to the charity trustees, as would be required if the Commission was proceeding (without an order of the court) under section 69.
- (8) But on any application for a scheme, or in a case where it acts by virtue of section 70(5) or (6), the Commission may proceed under this section or section 69 as appears to it appropriate.

#### **74 Restriction on expenditure on promoting Bills**

- (1) No expenditure incurred in preparing or promoting a Bill in Parliament is to be defrayed without the consent of the court or the Commission out of any money applicable for the purposes of a charity.
- (2) Subsection (1) applies regardless of anything in the trusts of a charity.

#### **75 Further powers to alter application of charitable property**

- (1) Subsection (2) applies where the Commission is satisfied that—
- (a) the whole of the income of a charity cannot in existing circumstances be effectively applied for the purposes of the charity,
  - (b) if those circumstances continue, a scheme might be made for applying the surplus cy-près, and
  - (c) it is for any reason not yet desirable to make such a scheme.
- (2) The Commission 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.
- (3) Any application of accrued or accruing income authorised by an order under subsection (2) is to be treated as being within the purposes of the charity.
- (4) An order under subsection (2) must not extend—
- (a) to more than £300 out of income accrued before the date of the order,
  - (b) to income accruing more than 3 years after that date, or
  - (c) to more than £100 out of the income accruing in any of those 3 years.