



2008 CHAPTER 12

PART 6

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

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

Further powers to make schemes or alter application of charitable property

32.—(1) Where it appears to the Commission 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 the Parliament of the United Kingdom or Northern Ireland legislation establishing or regulating the charity or to make any other provision which goes or might go beyond the powers exercisable by the Commission apart from this section, or that it is for any reason proper for the scheme to be subject to review by the Assembly, then (subject to subsection (6)) the Commission may 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 Department, and a draft of the order shall be laid before the Assembly.

(3) 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 of the United Kingdom or Northern Ireland legislation, the order shall not be made unless the draft has been approved by resolution of the Assembly.

(4) Subject to subsection (5), any provision of a scheme brought into effect under this section may be modified or superseded by the Court or the Commission as if it were a scheme brought into effect by order of the Commission under section 31.

(5) Where subsection (3) applies to a scheme, the order giving effect to it may direct that the scheme shall not be modified or superseded by a scheme brought into effect otherwise than under this section, and may also direct that that subsection shall apply to any scheme modifying or superseding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 Commission shall not proceed under this section without the like application and the like notice to the charity trustees, as would be required if it was proceeding (without an order of the Court) under section 31; but on any application for a scheme, or in a case where it acts by virtue of subsection (6) or (7) of that section, the Commission may proceed under this section or that section as appears to it appropriate.

(7) Notwithstanding anything in the trusts of a charity, no expenditure incurred in preparing or promoting a Bill in the Parliament of the United Kingdom or a Bill of the Assembly shall without the consent of the Court or the Commission be defrayed out of any moneys applicable for the purposes of a charity.

(8) Where the Commission is 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 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, and any application authorised by the order shall be deemed to be within the purposes of the charity.

(9) An order under subsection (8) shall not extend to more than £300 out of income accrued before the date of the order, not to income accruing more than 3 years after that date, nor to more than £100 out of the income accruing in any of those 3 years.