Charities Act 2011

2011 CHAPTER 25

PART 6

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

Cy-près powers and variation of charters

61 Duty of trustees in relation to application of property cy-près

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.

62 Occasions for applying property cy-près

(1) Subject to subsection (3), 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 are—

(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,

(b) where the original purposes provide a use for part only of the property available by virtue of the gift,

(c) where—

(i) the property available by virtue of the gift, and

(ii) other property applicable for similar purposes,

can be more effectively used in conjunction, and to that end can suitably, regard being had to the appropriate considerations, be made applicable to common purposes,

(d) where the original purposes were laid down by reference to—

(i) an area which then was but has since ceased to be a unit for some other purpose, or

(ii) a class of persons or an area which has for any reason since ceased to be suitable, regard being had to the appropriate considerations, 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,

(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 appropriate considerations.

(2) In subsection (1) "the appropriate considerations" means—

(a) (on the one hand) the spirit of the gift concerned, and

(b) (on the other) the social and economic circumstances prevailing at the time of the proposed alteration of the original purposes.

(3) Subsection (1) does 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.

(4) References in subsections (1) to (3) to the original purposes of a gift are to be read, 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.

(5) 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 column 1 in Schedule 4, provide for enlarging the area to any such area as is mentioned in column 2 in the same entry in that Schedule.

(6) Subsection (5) does not affect the power to make schemes in circumstances falling within subsection (1).

63 Application cy-près: donor unknown or disclaiming

(1) Property given for specific charitable purposes which fail is applicable cy-près as if given for charitable purposes generally, if 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 ended,

cannot be identified or cannot be found, or

(b) to a donor who has executed a disclaimer in the prescribed form of the 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 are not liable to

any person in respect of the property if no claim by that person to be interested in it is received by them before the end of the period mentioned in subsection (1)(a)(ii).

(3) Where property is applied cy-près by virtue of this section, all the donor's interest in it is treated as having been relinquished when the gift was made.

(4) 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 section 64 (donors treated as unidentifiable)—

(a) the scheme must specify the total amount of that property,

(b) the donor of any part of that amount is entitled, on making a claim within the time limit, 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 the scheme's date in connection with claims relating to the donor's gift, and

(c) the scheme may include directions as to the provision to be made for meeting any claims made in accordance with paragraph (b).

(5) For the purposes of subsection (4)(b)—

(a) a claim is made within the time limit only if it is made no later than 6 months after the date on which the scheme is made, and

(b) "the scheme's date" means the date on which the scheme is made.

(6) Subsection (7) applies if—

(a) any sum is, in accordance with any directions included in the scheme under subsection (4)(c), set aside for meeting claims made in accordance with subsection (4)(b), but

(b) the aggregate amount of any such claims actually made exceeds the relevant amount;

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) If the Commission so directs, each of the donors in question is entitled only to such proportion of the relevant amount as the amount of the donor's claim bears to the aggregate amount referred to in subsection (6)(b).

64 Donors treated as unidentifiable

(1) For the purposes of section 63 property is conclusively presumed (without any advertisement or inquiry) to belong to donors who cannot be identified, in so far as it consists of—

(a) the proceeds of cash collections made—

(i) by means of collecting boxes, or

(ii) by other means not adapted for distinguishing one gift from another, or

(b) 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.

(2) The court or the Commission may by order direct that property not falling within subsection (1) is for the purposes of section 63 to be treated (without any advertisement

or inquiry) as belonging to donors who cannot be identified if it appears to the court or the Commission—

(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.

65 Donors treated as disclaiming

(1) This section applies to property given—

(a) for specific charitable purposes, and

(b) in response to a solicitation within subsection (2).

(2) A solicitation is within this subsection if—

(a) it is made for specific charitable purposes, and

(b) it is accompanied by a statement to the effect that property given in response to it will, in the event of those purposes failing, be applicable cy-près as if given for charitable purposes generally, unless the donor makes a relevant declaration at the time of making the gift.

(3) A relevant declaration is a declaration in writing by the donor to the effect that, in the event of the specific charitable purposes failing, the donor wishes to be given the opportunity by the trustees holding the property to request the return of the property in question (or a sum equal to its value at the time of the making of the gift).

(4) Subsections (5) and (6) apply if—

(a) a person has given property as mentioned in subsection (1),

(b) the specific charitable purposes fail, and

(c) the donor has made a relevant declaration.

(5) The trustees holding the property must take the prescribed steps for the purpose of—

(a) informing the donor of the failure of the purposes,

(b) enquiring whether the donor wishes to request the return of the property (or a sum equal to its value), and

(c) if within the prescribed period the donor makes such a request, returning the property (or such a sum) to the donor.

(6) If those trustees have taken all appropriate prescribed steps but—

(a) they have failed to find the donor, or

(b) the donor does not within the prescribed period request the return of the property (or a sum equal to its value),

section 63(1) applies to the property as if it belonged to a donor within section 63(1)(b) (application of property where donor has disclaimed right to return of property).

(7) If—

(a) a person has given property as mentioned in subsection (1),

(b) the specific charitable purposes fail, and

(c) the donor has not made a relevant declaration,

section 63(1) similarly applies to the property as if it belonged to a donor within section 63(1)(b).

(8) For the purposes of this section—

(a) "solicitation" means a solicitation made in any manner and however communicated to the persons to whom it is addressed,

(b) it is irrelevant whether any consideration is or is to be given in return for the property in question, and

(c) where any appeal consists of—

(i) solicitations that are accompanied by statements within subsection (2)(b), and

(ii) solicitations that are not so accompanied,

a person giving property as a result of the appeal is to be presumed, unless the contrary is proved, to have responded to the former solicitations and not the latter.

66 Unknown and disclaiming donors: supplementary

(1) For the purposes of sections 63 and 65, charitable purposes are to be treated as failing if 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.

(2) In sections 63 to 65 and this section—

(a) references to a donor include persons claiming through or under the original donor, and

(b) references to property given include the property for the time being representing the property originally given or property derived from it.

(3) Subsection (2) applies except in so far as the context otherwise requires.

(4) In sections 63 and 65 "prescribed" means prescribed by regulations made by the Commission.

(5) Any such regulations are to be published by the Commission in such manner as it thinks fit.

(6) Any such regulations may, as respects the advertisements which are to be published for the purposes of section 63(1)(a), make provision as to the form and content of such advertisements as well as the manner in which they are to be published.

67 Cy-près schemes

(1) The power of the court or the Commission to make schemes for the application of property cy-près must be exercised in accordance with this section.

(2) Where any property given for charitable purposes is applicable cy-près, the court or the Commission may make a scheme providing for the property to be applied—

(a) for such charitable purposes, and

(b) (if the scheme provides for the property to be transferred to another charity) by or on trust for such other charity,

as it considers appropriate, having regard to the matters set out in subsection (3).

(3) The matters are—

(a) the spirit of the original gift,
(b) the desirability of securing that the property is applied for charitable purposes which are close to the original purposes, and
(c) the need for the relevant charity to have purposes which are suitable and effective in the light of current social and economic circumstances.

The "relevant charity" means the charity by or on behalf of which the property is to be applied under the scheme.

(4) If a scheme provides for the property to be transferred to another charity, the scheme may impose on the charity trustees of that charity a duty to secure that the property is applied for purposes which are, so far as is reasonably practicable, similar in character to the original purposes.

(5) In this section references to property given include the property for the time being representing the property originally given or property derived from it.

(6) In this section references to the transfer of property to a charity are references to its transfer—
(a) to the charity,
(b) to the charity trustees,
(c) to any trustee for the charity, or
(d) to a person nominated by the charity trustees to hold it in trust for the charity,

as the scheme may provide.

(7) In this section references to the original purposes of a gift are to be read, 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.

68 Charities governed by charter, or by or under statute

(1) Subsection (2) applies where a Royal charter establishing or regulating a body corporate is amendable by the grant and acceptance of a further charter.

(2) 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)—
(a) may be made by the court under the court's jurisdiction with respect to charities even though the scheme cannot take effect without the alteration of the charter, but
(b) must 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.

(3) Subsection (4) applies where, under—
(a) the court's jurisdiction with respect to charities or the corresponding jurisdiction of a court in Northern Ireland, or
(b) 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.

(4) Her Majesty may, on the application of the body corporate, 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 the same manner as the charter it amends.

(5) The jurisdiction of the court with respect to charities is not excluded or restricted in the case of a charity of a description mentioned in Schedule 5 by the operation of the enactments or instruments there mentioned in relation to that description.

(6) A scheme established for a charity of a description mentioned in Schedule 5—

(a) 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

(b) may also make any such provision as is authorised by that Schedule.