



Charities Act 1960

1960 CHAPTER 58

PART III

APPLICATION OF PROPERTY CY-PRÈS, AND ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT AND CENTRAL AUTHORITIES

Powers of Commissioners and Minister to make schemes, etc.

18 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, that is to say:—
 - (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 servant;
 - (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.
- (5) In the case of a charity not having any income from property amounting to more than fifty pounds a year, and not being an exempt charity, the Commissioners may exercise their jurisdiction under this section on the application—
 - (a) of the Attorney General; or
 - (b) of any one or more of the charity trustees, or of any person interested in the charity, or 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, the Commissioners may apply to the Secretary of State for him to refer the case to them with a view to a scheme, and if, after giving the charity trustees an opportunity to make representations to him, the Secretary of State does so, the Commissioners may proceed accordingly without the application required by subsection (4) or (5) above:

Provided that 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) 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.
- (8) 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.
- (9) 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.
- (10) An appeal against any order of the Commissioners under this section may be brought in the High Court by the Attorney General.
- (11) 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):

Provided that no appeal shall be brought under this subsection 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.
- (12) 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 (11) 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 parish council of any rural parish comprising the area or any part of it; but a parish council shall not exercise their right of appeal without the consent of the parish meeting.

- (13) In the application of this section to the Minister of Education, subsection (6) shall have effect so as to authorise him to proceed with a view to a scheme in the circumstances in which it authorises the Commissioners to apply to the Secretary of State for him to refer a case to them.

19 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 made by statutory instrument, and a draft of the statutory instrument shall be laid before Parliament.
- (3) Without prejudice to the operation of section six 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 eighteen of this Act.
- (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 or the like reference from the Secretary of State, and the like notice to the charity trustees, as would be required if they were proceeding (without an order of the court) under section eighteen of this Act; but on any application or reference made with a view to a scheme, the Commissioners may proceed under this section or that 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:

Provided that 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:

Provided that the order shall not extend to more than three hundred pounds 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 one hundred pounds out of the income accruing in any of those three years.

(9) In the application of this section to the Minister of Education, a reference to that Minister shall be substituted for the reference in subsection (2) to the Secretary of State.

20 Power to act for protection of charities

(1) Where the Commissioners are satisfied as the result of an inquiry instituted by them under section six of this Act—

- (a) that there has been in the administration of a charity any misconduct or mismanagement; 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;

then for that purpose the Commissioners may of their own motion do all or any of the following things:—

- (i) they may by order remove any trustee, charity trustee, officer, agent or servant 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) they may make any such order as is authorised by subsection (1) of section sixteen of this Act with respect to the vesting in or transfer to the official custodian for charities of property held by or in trust for the charity;
- (iii) they may order any bank or other person who holds money or securities on behalf of the charity or of any trustee for it not to part with the money or securities without the approval of the Commissioners;
- (iv) they may, notwithstanding anything in the trusts of the charity, by order restrict 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.

(2) The references in subsection (1) 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.

- (3) The Commissioners may also remove a charity trustee by order made of their own motion—
- (a) where the trustee has been convicted of felony, or is a bankrupt or a corporation in liquidation, or is incapable of acting by reason of mental disorder within the meaning of the Mental Health Act, 1959;
 - (b) where the trustee has not acted, and will not declare his willingness or unwillingness to act;
 - (c) 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.
- (4) 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;
 - (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.
- (5) 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 eighteen of this Act.
- (6) 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 eighteen of this Act.
- (7) Subsections (10) and (11) of section eighteen of this Act shall apply to orders under this section as they apply to orders under that, save that where the Commissioners have by order removed a trustee, charity trustee, officer, agent, or servant of a charity under the power conferred by subsection (1) of this section, an appeal against such an order may be brought by any person so removed without a certificate of the Commissioners and without the leave of one of the judges of the High Court attached to the Chancery Division.
- (8) The power of the Commissioners under subsection (1) above to remove a trustee, charity trustee, officer, agent or servant of a charity shall include power to suspend him from the exercise of his office or employment pending the consideration of his removal (but not for a period longer than three months), and to make provision as respects the period of the 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.

- (9) Before exercising any jurisdiction under this section, 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.
- (10) If any person contravenes an order under paragraph (iii) of subsection (1) above, he shall be liable on summary conviction to a fine not exceeding one hundred pounds, or to imprisonment for a term not exceeding six months, or to both; but no proceedings for an offence punishable under this subsection shall be instituted except by or with the consent of the Commissioners.
- (11) Notwithstanding subsection (8) of section three of this Act, paragraph (ii) of subsection (1) above shall apply to the Minister of Education as well as to the Commissioners.
- (12) This section shall not apply to an exempt charity.

21 Publicity for proceedings under ss. 18 to 20

- (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 in a rural parish (other than an ecclesiastical charity), a draft of the scheme has been communicated to the parish council or, in the case of a parish not having a parish 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 for charities), 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:

 Provided that this subsection shall not apply in the case of 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 servant 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 with-, out 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 (11) of section eighteen of this Act, 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.