



# Charities Act (Northern Ireland) 1964<sup>F1</sup>

## 1964 CHAPTER 33

### N.I.

An Act to replace, with new provisions, certain existing enactments relating to charities; to make further provision with respect to gifts to charity and gifts for mixed charitable and non-charitable purposes; and for purposes connected with those matters. [20th October 1964]

**F1** Functions transf., SR 1999/481

**F2** Act repealed (prosp.) by [Charities Act \(Northern Ireland\) 2008 \(c. 12\)](#), ss. 184, 185(1), [Sch. 9](#)

WHEREAS, pursuant to section 12(2)( *b*) of the Northern Ireland Act 1962<sup>M1</sup>, the consent of the Lord Chief Justice has been obtained to the provisions of this Act which confer powers on the taxing master of the Supreme Court in relation to the taxation of expenses deducted by the Ministry of Finance from the funds of a charity:

#### Marginal Citations

**M1** [1962 c. 30](#)

And Whereas the Clerk of the Parliaments has certified accordingly pursuant to section 1 of the Legislative Procedure Act (Northern Ireland) 1933<sup>M2</sup>, as applied by section 12(4) of the Northern Ireland Act 1962 for the purposes of the said section 12(2)( *b*):

#### Marginal Citations

**M2** [1933 c. 4](#)

*Status: Point in time view as at 01/01/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Charities Act (Northern Ireland) 1964. (See end of Document for details)*

## PART I **N.I.**

### POWERS OF MINISTRY OF FINANCE AS CHARITY AUTHORITY

#### **N.I.**

#### GENERAL POWERS OF MINISTRY

#### 1 Applications for opinion etc. of Ministry. **N.I.**

- (1) The Ministry of Finance (in this Act referred to as “the Ministry” ) shall receive and consider any application made to it in writing by the trustees of any charity for the opinion or advice of the Ministry in relation to any matter or question concerning that charity.
- (2) Where an application is made to the Ministry under subsection (1), the Ministry may give, in writing under seal, such opinion or advice as it considers proper.
- (3) Where a trustee acts in accordance with any opinion or advice given by the Ministry under this section—
  - (a) he shall be deemed to have acted in accordance with the terms of his trust; and
  - (b) an order made subsequently by any court shall not affect the operation of paragraph ( a).
- (4) Subsection (3)( a) shall not apply in relation to any trustee who acts in accordance with the opinion or advice of the Ministry if—
  - (a) he has been guilty of any fraud, wilful concealment or misrepresentation in making an application for that opinion or advice; or
  - (b) before he so acts the opinion of the Court has been obtained in relation to the matter or question in respect of which an application has been made under subsection (1) for the opinion or advice of the Ministry or proceedings to obtain the opinion of the Court in relation to that matter or question have been instituted.

#### 2 Certification of cases to Attorney-General. **N.I.**

- (1) Where it appears to the Ministry that the institution of legal proceedings should be considered in relation to any charity, the Ministry may send a certificate to that effect, together with such particulars as the Ministry considers may be necessary to explain the matter, to the Attorney-General.
- (2) Where the Attorney-General receives a certificate from the Ministry under subsection (1) he may, if he thinks fit, institute such legal proceedings as he considers proper.

#### 3 Power to call for documents and search records. **N.I.**

- (1) Where the Ministry has reasonable grounds to believe that any property belonging to a charity or given for charitable purposes may have been concealed, misapplied or withheld, it may, with the consent of the Attorney-General, by order require any person having in his possession or control any books, records, deeds or papers relating to the charity—

*Status: Point in time view as at 01/01/2006.*

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- (a) to furnish the Ministry with copies of or extracts from any of those documents; or
  - (b) unless the document forms part of the records of other documents of a court or of a public or local authority, to transmit the document itself to the Ministry for inspection.
- (2) Any officer of the Ministry, if so authorised by the Ministry, shall be entitled without payment to inspect and take copies of or extracts from the records or other documents of any court, or of any public registry or office of records, for any purpose connected with the discharge of the functions of the Ministry under this Act.
- (3) The Ministry shall be entitled without payment to keep any copy or extract furnished to the Ministry under subsection (1); and where the document transmitted to the Ministry under that subsection for inspection by the Ministry—
- (a) relates only to one or more charities; and
  - (b) is not held by any person entitled as trustee or otherwise to the custody of the document;
- the Ministry may keep the document or deliver it to the trustees of the charity or to any other person who may be so entitled.

#### 4 Publication of charitable gifts in wills. **N.I.**

- (1) Where a will contains a charitable gift to be applied or paid in Northern Ireland, the Ministry may, if it thinks fit, require the person to whom probate of the will or letters of administration with the will annexed have been granted—
- (a) to produce to the Ministry, within six months after the grant of probate or letters of administration or within two months after the date on which the Ministry makes the requirement, whichever period expires later, such evidence as the Ministry may require to show either—
    - (i) that the property comprised in the gift has been transferred to the charity specified in the will; or
    - (ii) that the trustees of the charity specified in the will are aware of the gift; or
  - (b) to publish, within six months after the grant of probate or letters of administration or within two months after the date on which the Ministry makes the requirement, whichever period expires later, such particulars of the gift as the Ministry may require and in such manner as the Ministry may specify.
- (2) If any person fails to comply with any requirement made under subsection (1) he shall be guilty of an offence and liable on summary conviction to a fine not exceeding<sup>F3</sup> level 3 on the standard scale].

F3 1984 NI 3

#### 5 Compromises of claims by or against charities. **N.I.**

- (1) Where it appears to the trustees of a charity that any claim by the charity against any person should be compromised, the trustees or, with their consent, that person may submit a proposal for the compromise of the claim to the Ministry.

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- (2) Where it appears to the trustees of a charity that any claim by any person against the charity or the trustees should be compromised, the trustees or, with their consent, that person, may submit a proposal for the compromise of the claim to the Ministry.
- (3) Where it appears to the Ministry that a proposal under subsection (1) or (2) is, with or without any modification, for the benefit of the charity concerned, the Ministry may make such order in relation to the compromise specified in the proposal as it thinks fit.
- (4) The Ministry may compromise any claim by or against the Ministry in respect of any property belonging to a charity of which the Ministry is a trustee if the Ministry is satisfied that the compromise would be for the benefit of the charity concerned.
- (5) Where the terms and conditions of a compromise under this section are complied with, legal proceedings shall not be entertained in any court by or against the charity in relation to the claim in respect of which the compromise was made.

## 6 **Transfer of certain administration actions to Ministry.** N.I.

- (1) Where—
  - (a) a testator has by will bequeathed or devised any property for any charitable purpose; and
  - (b) an action has been instituted for the administration of the assets of, or for the purpose of carrying out the trusts established by, the testator;
 the Ministry, although not a party to the action, may apply on the ground of undue or improper delay to the court in which the action is pending to have the conduct of the action transferred to the Ministry.
- (2) Where, on an application under subsection (1), a court is satisfied that there has been undue or improper delay in proceeding with the action, the court may—
  - (a) transfer the conduct of the action to the Ministry; or
  - (b) impose on the person having the conduct of the action such terms as it may consider necessary for the purpose of bringing the action to a speedy termination;
 and may make such order on the application as it thinks fit.
- (3) The Ministry shall, before making an application under subsection (1), give the Attorney-General notice of its intention to make the application.

## 7 **Receipts given by Ministry.** N.I.

- (1) Where—
  - (a) a person is liable to pay any sum to or for any charitable purpose; and
  - (b) by reason of the death, absence or incapacity of a trustee or other person capable of giving a valid discharge, or of there being no such person, difficulty arises in paying the sum;
 the Ministry may, if it thinks fit, accept the sum which shall be applied by the Ministry in accordance with the trusts affecting the sum.
- (2) A receipt given by the Ministry in respect of any sum accepted by it under subsection (1) shall be a full discharge to the person who paid the sum to the Ministry.

*Status: Point in time view as at 01/01/2006.*

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## 8 Funds in court. **N.I.**

- (1) Where any fund standing to the credit of a charity or impressed with a charitable trust in any proceedings under the jurisdiction of a court, is not being applied for the benefit of the charity or in accordance with that trust, the Ministry may apply to the court for the transfer of the fund to the Ministry upon the trusts affecting the fund.
- (2) Where the Ministry applies to any court under subsection (1), the court may make such order as it thinks fit in respect of the transfer of the fund.
- (3) The Ministry shall, before making an application under subsection (1), give the Attorney-General notice of its intention to make the application.

## 9 Taxation of solicitor's bill. **N.I.**

- (1) The Ministry may order that a solicitor's bill of costs for business done for a charity, or the trustees of any charity, shall be taxed by the [<sup>F4</sup> Master (Taxing Office)].
- (2) On any order under this section for the taxation of a solicitor's bill the taxation shall proceed, and the [<sup>F4</sup> Master (Taxing Office)] shall have the same powers and duties, and the costs of the taxation shall be borne as if the order had been made, on the application of the person chargeable with the bill, by the Court.
- (3) An order shall not be made under this section for the taxation of any bill—
  - (a) after the bill has been paid, unless the Ministry is of opinion that the bill contains exorbitant charges; or
  - (b) if the solicitor's costs are not subject to taxation on an order of the Court by reason of—
    - (i) an agreement as to his remuneration; or
    - (ii) the lapse of time since payment of the bill.

**F4** 1978 c.23

**N.I.**

### PROVISIONS FACILITATING ADMINISTRATION OF CHARITIES

## 10 Incorporation schemes for charity trustees. **N.I.**

- (1) The trustees of a charity may apply to the Ministry for a scheme of incorporation under this section.
- (2) Where an application is made to it under subsection (1) the Ministry may make a scheme establishing, upon such terms and conditions as the Ministry may specify in the scheme, trustees of the property belonging to the charity as a body corporate and vesting that property in that body in accordance with section 11.
- (3) A scheme under this section may—
  - (a) contain provisions with respect to the choice and appointment of trustees of the body incorporated thereunder and provisions for the management by or on behalf of those trustees of the trusts which apply to the charity;

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- (b) contain provisions requiring or entitling any person to produce, execute or hand over any documents or to do any other act or thing necessary to secure the vesting of the property belonging to the charity pursuant to the scheme;
  - (c) contain such transitional, incidental and supplemental provisions as appear to the Ministry to be necessary for the purposes of the scheme; and
  - (d) be amended from time to time by a subsequent scheme made by the Ministry upon application made to it by or on behalf of the body corporate established by the scheme or by any interested person.
- (4) A scheme under this section shall, if it contains words applying section 19 of the Interpretation Act (Northern Ireland) 1954<sup>M3</sup> to the body corporate established by the scheme, have the like effect by virtue of that section as if it were an Act passed after the commencement of that Act but, whether or not a scheme under this section contains such words, every body corporate established by the scheme shall have a corporate seal and power to sue in its corporate name as well as power to do every act or thing necessary for the administration of the trusts applying to the charity.

#### Marginal Citations

M3 1954 c. 33

## 11 Further provisions as to schemes under s. 10. **N.I.**

- (1) A scheme under section 10—
- (a) shall operate, as from the date of the scheme and without further assurance, to vest, upon the trusts which apply to the charity in the body corporate established by the scheme, the property belonging to the charity together with all rights and liabilities enjoyed or incurred in connection therewith by all or any of the persons (in this section referred to as “the transferors” ) who immediately before the making of the scheme held any of that property upon those trusts; and
  - (b) shall be deemed for the purposes of the registration of the scheme in any registry to be a conveyance of the trust property by the transferors to the body corporate established by the scheme.
- (2) Upon the making of a scheme under section 10—
- (a) all moneys, stocks, shares and securities vested by the scheme which on the date of making of the scheme are standing in the books of any corporation or company or are entered on any register kept in pursuance of any enactment shall on request made by or on behalf of the body corporate established by the scheme be transferred into the name of that body;
  - (b) all debts and liabilities incurred by the transferors in connection with the trust property or the administration of the charitable trusts and owing immediately before the making of the scheme (whether then due or in future to become due certainly or contingently) shall become and be the debts and liabilities of the body corporate established by the scheme;
  - (c) all contracts and agreements made by the transferors in connection with the trust property or the administration of the charitable trusts and not fully executed and completed before the making of the scheme shall continue in force but shall be construed and have effect with the substitution of the body corporate established by the scheme for the transferors; and

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- (d) in every action, prosecution or other proceeding in respect of the trust property or arising on or in connection with its administration which is pending immediately before the making of the scheme and to which the transferors are a party, the body corporate established by the scheme shall become and be a party in the place of the transferors and the action, prosecution or other proceeding shall continue accordingly.

## 12 Appointment of new charity trustees. **N.I.**

- (1) Where it appears to the Ministry that the appointment of a new trustee or new trustees of a charity is necessary in the interests of the proper administration of the charity, and that the appointment cannot conveniently be made otherwise than by an order made under this section or of the Court then, subject to subsection (2), the Ministry—

- (a) on the application of the trustee or trustees of the charity;
- (b) if there are no trustees of the charity, or they refuse to act or cannot be found, on the application of any person having an interest; or
- (c) if an application is not made to it in pursuance of paragraph (a) or (b) within such a period as is reasonable (regard being had to all the circumstances), of its own motion;

may, with the consent of the Attorney-General, make an order appointing a new trustee or new trustees of the charity either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

- (2) The Ministry shall not appoint a new trustee under subsection (1) in substitution for an existing trustee unless the existing trustee desires to be discharged from, or refuses to act in, the administration of the charity.

- (3) Where—

- (a) there are no trustees of a charity or they cannot be found; and
- (b) it appears to the Ministry that no suitable person is willing to be appointed as a new trustee of the charity under this section;

the Ministry may, with the consent of the Attorney-General, make an order under subsection (1) appointing itself as the sole trustee of the charity.

- (4) An order under subsection (1) may include provisions vesting the property of the charity for such estate as the Ministry may direct in the persons who on the appointment are the new trustees, and the provisions shall have the same effect as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the property for such estate as the Ministry directs, or if there is no such person, or no such person of full capacity, then as if such person had existed and been of full capacity and had duly executed all proper conveyances of the property for such estate as the Ministry directs.

- (5) Every trustee of a charity appointed under this section, before as well as after the property of the charity becomes vested in him—

- (a) shall have the same powers, authorities and discretions; and
- (b) may in all respects act;

as if he had been originally appointed by the instrument, if any, creating the trust.

- (6) The Ministry shall, not less than one month before the date on which the Ministry proposes to make an order under this section, give public notice of the proposed order



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in such manner as the Ministry considers most effectual for ensuring publicity for the proposal and for bringing it to the attention of persons interested.

- (7) The Ministry shall consider any suggestions received by it in relation to the proposed order, and may take such action thereon as it considers appropriate.
- (8) The Ministry shall, within fourteen days after making an order under this section, give public notice of the effect thereof in such manner as the Ministry considers most effectual for ensuring publicity for the order, and for bringing it to the attention of persons interested.
- (9) Any person having an interest may, within twenty-eight days after the date of the first publication, in pursuance of subsection (8), of notice of the effect of an order under this section, appeal to the Court against the order.
- (10) Where a person appeals to the Court against an order made under this section, the Ministry shall, within seven days after the date on which it receives notice of the appeal, give notice to the Attorney-General that such an appeal is being made.
- (11) On an appeal under subsection (9)—
  - (a) the Court may make such order confirming, annulling or varying an order under this section, and such order as to costs, as it thinks fit;
  - (b) the Ministry and the trustees, if any, of the charity concerned shall be entitled to be represented and heard.
- (12) An order under this section—
  - (a) if an appeal is not brought against it, shall become operative on the expiration of the period of twenty-eight days mentioned in subsection (9);
  - (b) if an appeal is brought against it, shall become operative on the date of the final determination of the appeal, if and so far as it is confirmed by the Court, or, if the appeal is withdrawn, on the date of the withdrawal.
- (13) An order under this section shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.
- (14) This section does not confer power to appoint an executor or administrator.
- (15) Where a body corporate is appointed under this section to be, or a body corporate appointed under this section becomes, sole trustee of a trust, the terms of which provide for or require the appointment of more than one trustee, then during such time as the body corporate holds the office of trustee of the trust—
  - (a) the terms of the trust shall be treated as providing for or requiring the appointment of one trustee only; and
  - (b) one trustee only shall be deemed to have been originally appointed under the terms of the trust.

*Subs. (16) rep. by 1970 c. 18 (NI)*



*Status: Point in time view as at 01/01/2006.*

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**N.I.**

CY-PRÈS JURISDICTION OF MINISTRY, ETC.

**13<sup>F5</sup> Cy-près powers of Ministry. **N.I.****

- (1)<sup>F6</sup> The Ministry may, in the cases and circumstances specified in sections 22 and 23, make a cy-près scheme for the application to charitable purposes of any property given for charitable purposes if the aggregate value of the property to be comprised in the scheme does not exceed<sup>F7</sup> £50,000].
- (2) Before making a scheme under this section the Ministry shall give notice, in such manner as the Ministry considers appropriate for the purpose of bringing the proposed scheme to the attention of persons interested in the charity, of the intention of the Ministry to make the scheme.
- (3) A notice under subsection (2)—
  - (a) shall contain particulars of the objects of the proposed schemes, so far as it is practicable to give them; and
  - (b) shall specify a period (not being less than twenty-eight days) within which any objections to or suggestions in relation to the proposed scheme may be sent to the Ministry.
- (4) The Ministry shall consider any objections and suggestions sent to it under subsection (3)( b) and may take such action thereon as it considers appropriate.
- (5) Subsection (2) shall not be construed as requiring the Ministry to give any notice of any modification which the Ministry proposes to make to a scheme prepared under this section following any objections or suggestions sent to it under subsection (3)( b) but the Ministry may, if it thinks fit, give notice of any such modification.
- (6) The Ministry shall, within fourteen days after making a scheme under this section, give notice of the effect thereof in such manner as the Ministry considers appropriate for the purpose of bringing the scheme to the attention of persons interested in the charity concerned.
- (7) The Ministry may make a scheme under this section in relation to any property notwithstanding that that property is applicable for a charitable purpose by virtue of a scheme made by the Court.
- (8) Any person having an interest may within twenty-eight days after the date of the first publication, in pursuance of subsection (6), of notice of the effect of a scheme under this section, appeal to the Court in relation to the scheme.
- (9) Where a person appeals to the Court in relation to a scheme made under this section, the Ministry shall, within seven days after the date on which it receives notice of the appeal, give notice to the Attorney-General that such an appeal is being made.

**F5** 1972 NI 12

**F6** 1980 c.9

**F7** 1987 NI 19

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## 14 Misdescribed charitable beneficiaries in wills. **N.I.**

- (1) Where—
- (a) under the will of any deceased person (in this section referred to as “the testator”) property not exceeding<sup>F8</sup> £2,500 in value is devised or bequeathed to any institution; and
  - (b) the personal representatives of the testator are satisfied—
    - (i) that no such institution as is described in the will of the testator exists; and
    - (ii) that the testator intended to devise or bequeath the property to a charity;
 they may transfer the property to the Ministry, if the Ministry agrees to accept it.
- (2) A receipt given by the Ministry in respect of any property accepted by it under subsection (1) shall be a full discharge to the personal representatives who transferred that property to the Ministry.
- (3) The Ministry may accept any property under subsection (1) only if it is satisfied that the testator intended to devise or bequeath the property to a charity.
- (4) Where the Ministry accepts any property under subsection (1) it shall endeavour to ascertain the charity to which the testator intended to devise or bequeath the property; and—
- (a) if the Ministry is satisfied that a specific charity is the devisee or legatee intended by the testator, it shall, if the Attorney-General consents, transfer the property to that charity;
  - (b) if the Ministry is unable to satisfy itself as to which charity in a class of charities is the devisee or legatee intended by the testator but is satisfied that the testator intended to devise or bequeath the property to a charity in that class, it shall, if the Attorney-General consents, either—
    - (i) transfer the property to such charity in that class as appears to the Ministry to be appropriate having regard to the intentions of the testator; or
    - (ii) distribute the property, in such proportions as the Ministry thinks fit, among such charities in that class as appear to the Ministry to be appropriate having regard to the intentions of the testator;
  - (c) if the Ministry is not satisfied as mentioned in paragraph ( b ), but it appears to the Ministry that the testator intended to give the property for charitable purposes generally, it shall, if the Attorney-General consents, transfer the property to such charity as appears to the Ministry to be appropriate having regard to the intentions of the testator.

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**N.I.**

POWERS OF MINISTRY IN RELATION TO CHARITY PROPERTY

**15 Acceptance of charity property by Ministry. N.I.**

- (1) The trustees of any charity may, with the consent of the Ministry, transfer all or any part of any property vested in them to the Ministry to be held by it upon the trusts affecting the property.
- (2) The Ministry may, if it thinks fit, accept the transfer of any property whatsoever upon such charitable trusts as the transferor of the property may direct.
- (3) Where the Ministry accepts any property on trust under subsection (1) or (2), the Ministry may appoint such persons as it thinks fit to administer, distribute or apply the property or the income thereof, and may remove any persons so appointed and appoint others in their place.
- (4) Any persons appointed under subsection (3) in relation to any property shall comply with such directions as the Ministry may issue with respect to the property.

**16 Proceedings to recover charity property. N.I.**

- (1) The Ministry may institute proceedings in any court of competent jurisdiction to recover any property whatsoever which should be applied to or for any charitable purpose, if the property is being concealed, misapplied or withheld.
- (2) The Ministry shall, before instituting any proceedings under subsection (1), give the Attorney-General notice of its intention to institute the proceedings.

**17 Leases of and improvements to charity lands. N.I.**

- (1) Where the trustees of a charity are of opinion that in relation to any land belonging to the charity it would be for the benefit of the charity—
  - (a) to let any part of the land—
    - (i) on building, repairing, improving or other leases; or
    - (ii) on leases for working any mines or minerals;
  - (b) to dig for or raise any stone, clay, gravel or other minerals on the land;
  - (c) to cut any timber on the land;
  - (d) to make any new road or street, or lay any drains or sewers, through the land;
  - (e) to erect any new building or repair, alter, rebuild or remove any existing building on the land;
  - (f) to make any other improvements or alterations in or on the land;they may make proposals in writing in that behalf to the Ministry.
- (2) Where the Ministry is of opinion that any proposals made to it under subsection (1) would be for the benefit of the charity concerned, the Ministry may confer power to execute the proposals (with or without modifications), subject to such conditions as it may specify.
- (3) The Ministry may, in relation to any proposals made to it under subsection (1), confer power to apply any funds belonging to the charity to which the proposals relate for any of the purposes referred to in subsection (1).

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- (4) The Ministry may, in relation to any charity of which it is the trustee, make such leases and perform such acts as are described in subsection (1), as it considers to be for the benefit of the charity.

**18<sup>F9</sup> Sale, exchange or mortgage of charity lands. N.I.**

- (1) Where—

- (a) the trustees of a charity apply to the Ministry for power to sell, exchange or mortgage any land belonging to the charity or to surrender any lease held by the charity; and
- (b) the Ministry is satisfied that the proposed sale, exchange, mortgage or surrender would be for the benefit of the charity;

the Ministry may confer power, subject to such conditions as it may specify, to sell, exchange or mortgage the land or to surrender the lease.

- (2) The Ministry may, if it is satisfied that to do so would be for the benefit of the charity—

- (a) sell, exchange or mortgage any land belonging to a charity of which the Ministry is the trustee;
- (b) surrender any lease held by a charity of which the Ministry is the trustee.

- <sup>F10</sup>(3) Subsection (1) shall apply to land belonging to a charity, other than land held inalienably by the National Trust for Places of Historic Interest or Natural Beauty, notwithstanding any enactment (including a local or private Act) providing that the land shall be inalienable.]

**F9** 1972 NI 12

**F10** 1966 c.31 (NI)

**19 Redemption of rent-charges etc. payable to charity. N.I.**

- (1) Where—

- (a) a periodical payment charged on land is payable to the trustees of a charity; and
- (b) the trustees apply to the Ministry for power to agree to the redemption of the payment by the owner of the land charged with it;

the Ministry may confer power, subject to such terms and conditions as it may specify, on the trustees to agree to the redemption of the payment by the owner of the land if it is satisfied that to do so would be for the benefit of the charity.

- (2) Where any periodical payment charged on land is payable to the Ministry as the trustee of any charity, the Ministry may, subject to such terms and conditions as it may specify, agree to the redemption of the payment by the owner of the land if it is satisfied that to do so would be for the benefit of the charity.

**20 Redemption of rent-charges etc., charged on charity's land. N.I.**

- (1) Where—

- (a) any land held by a charity is charged with a periodical payment; and
- (b) the trustees of the charity apply to the Ministry for power to redeem the payment;

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the Ministry may confer power, subject to such terms and conditions as it may specify, on the trustees to redeem the payment if it is satisfied that to do so would be for the benefit of the charity.

- (2) Where any land held by the Ministry as the trustee of a charity is charged with any periodical payment, the Ministry may, subject to such terms and conditions as it may specify, redeem the payment out of any funds belonging to the charity, if it is satisfied that to do so would be for the benefit of the charity.

## **21 Effect of transactions under ss. 17 to 20. N.I.**

- (1) Any sale, exchange, mortgage, lease or other transaction effected in pursuance of any power conferred by the Ministry under sections 17 to 20 shall have the same effect and validity as if the terms of the trust affecting the charity concerned had contained express terms conferring power to effect the sale, exchange, mortgage, lease or transaction.
- (2) The Ministry may confer any power specified in section 17, 18, 19 or 20 with retrospective effect.
- (3) Nothing in sections 17 to 20 shall operate to require the trustees of a charity to apply to the Ministry for power to do any act or thing which they are expressly or impliedly empowered to do by virtue of the terms of the trusts affecting the charity in question.
- (4) Any reference in this section to the trusts of a charity includes a reference to any trusts contained in or created under any enactment (whether public general, local or private).

## **PART II N.I.**

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

#### **N.I.**

#### **EXTENSION OF CY-PRÈS POWERS**

## **22 Occasions for applying property cy-près. N.I.**

- (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

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- (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
  - (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. N.I.**

- (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

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- (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—
  - (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

**N.I.**

## IMPERFECT TRUSTS

### 24 Gifts for mixed purposes. **N.I.**

- (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;



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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<sup>F11</sup> £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.
- (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.

**F11** 1987 NI 19

**N.I.**

## COMMON INVESTMENT FUNDS

### 25 Common investment schemes. **N.I.**

- (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—

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- (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;
  - (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

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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.
- (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) [<sup>F12</sup>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.

**F12** 1986 c.60

### PART III **N.I.**

#### MISCELLANEOUS PROVISIONS AS TO CHARITY TRUSTEES

#### **26 Power of two-thirds of trustees to act for certain purposes. **N.I.****

- (1) Subject to subsection (2), where four or more trustees are for the time being acting in the administration of a charity, not less than two-thirds of the number of trustees so acting may, in the names and on behalf of the trustees of the charity, make any application, perform any act or exercise any power, specified in subsection (3).
- (2) Where the terms of a charitable trust require a minimum of four or more trustees to act, then if that minimum number is for the time being acting, not less than two-thirds of that number may, in the names and on behalf of the trustees of the charity, make any application, perform any act or exercise any power, specified in subsection (3).
- (3) The said applications, acts and powers are as follows, namely:—
  - (a) to make any application to the Ministry under this Act;
  - (b) to perform such acts and enter into such contracts as may be necessary for the purpose of disposing of any property belonging to the charity;
  - (c) to execute such assurances or other deeds or instruments as may be necessary for the purpose of giving effect to any disposition of any property belonging to the charity;
  - (d) to exercise any power conferred on the trustees of a charity by or under this Act.

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- (4) For the purposes of subsection (1) or (2) where two-thirds of a number is a whole number and a fraction, the whole number and fraction shall be taken to be the next higher whole number.
- (5) An application made, act performed or power exercised by virtue of subsection (1) or (2) shall have the same effect as if made or exercised by all the trustees for the time being acting in relation to the charity concerned.

## **27 Duty to keep accounts. N.I.**

- (1) The trustees of a charity shall keep proper books of account with respect to the affairs of the charity, and the trustees of any charity who are not required by or under any other enactment to prepare periodical statements of account shall prepare consecutive statements of account each consisting of—
  - (a) a receipts and payments or an income and expenditure account relating to a period of not more than fifteen months; and
  - (b) if the value of the property belonging to the charity exceeds five hundred pounds, and the Ministry so directs, a balance sheet relating to the end of that period.
- (2) The books of account and statements of account relating to any charity shall be preserved for a period of at least seven years, unless—
  - (a) the charity ceases to exist; and
  - (b) the Ministry permits the books and statements to be destroyed or otherwise disposed of.

## **28 Deposit of deeds etc., with Ministry for safe keeping. N.I.**

- (1) Any trustees or other persons who have the custody of any deeds or instruments relating to a charity may, with the consent of the Ministry, deposit them with the Ministry for safe keeping.
- (2) The Ministry may establish and maintain such facilities as it considers necessary for the purposes of this section.

## **29 Applications to Court. N.I.**

- (1) Where—
  - (a) there is or is alleged to be a breach of any charitable trust; or
  - (b) the advice or order of the Court is required in connection with the administration of any charitable trust (including the application *cy-près* of any property belonging to a charity);the Ministry, the trustees of the charity or any person claiming to be interested may apply to the Court for such relief as may in the circumstances be necessary.
- (2) An order made on an application under this section may contain such provisions as the Court considers just.
- (3) <sup>F13</sup> An application under this section (other than an application by the Ministry) shall not be made without the consent of the Attorney-General.

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- (4) The Ministry shall, before making an application under this section, give the Attorney-General notice of its intention to make the application.

**F13** 1980 c.9

## PART IV **N.I.**

### SUPPLEMENTARY

#### **30 Returns of charitable gifts by Master (Probate and Matrimonial). **N.I.****

- (1) [<sup>F14</sup> The Master (Probate and Matrimonial)] shall, between 1st July and 1st November annually, make a certified return to the Ministry of every charitable gift to be applied or paid in Northern Ireland which is contained in any will entered in [<sup>F14</sup> the Probate and Matrimonial Office, or of which a copy has been forwarded to him from a branch office of that Office].
- (2) The return required under subsection (1) shall specify—
- (a) the name of the testator;
  - (b) the names of the persons to whom probate of the will or letters of administration with the will annexed have been granted; and
  - (c) the date of the will and of the probate or letters of administration.

**F14** 1978 c.23

#### **31 Enforcement of requirements made by the Ministry. **N.I.****

- (1) Any person who—
- (a) fails to comply with any requirement contained in an order under section 3(1); or
  - (b) fails to comply with any requirement contained in a scheme pursuant to section 10(3)(b);
- may on the application of the Ministry to the High Court be dealt with as for failure to comply with an order of that Court.
- (2) The Ministry shall, before making an application under subsection (1), give the Attorney-General notice of its intention to make the application.

#### **[<sup>F15</sup> 31A Variation of financial limits. **N.I.****

The Department may by order subject to affirmative resolution amend sections 13(1), 14(1) and 24(1) by substituting for any sum specified in any of those provisions such other sum as the Department considers appropriate.]

**F15** 1987 NI 19

*Status: Point in time view as at 01/01/2006.*

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**[<sup>F16</sup>32 Value of land, etc., for purposes of Act. N.I.]**

- (1) In determining the value of any property for the purposes of this Act, the value of any land and of any periodical payment charged on or issuing out of land shall be taken to be such amount as may be specified in a certificate given by or on behalf of the Commissioner of Valuation.
- (2) Any document purporting to be a certificate given by or on behalf of the Commissioner of Valuation for the purposes of subsection (1) shall be received in evidence and, until the contrary is proved, be deemed to be duly given.]

**F16** 1987 NI 19

**33 Costs and expenses of Ministry. N.I.**

- (1) Any expenses incurred by the Ministry under this Act shall, except where any other provision provides for their defrayal in some other manner, be defrayed out of moneys provided by Parliament.
- (2) Any costs or expenses incurred by the Ministry (other than any expenses incidental to the employment of any person in the Civil Service of Northern Ireland) in managing, administering, preserving or recovering any property vested in the Ministry under this Act, or otherwise in executing this Act, may be deducted by the Ministry from the funds of the charity in respect of which the costs or expenses were incurred.
- (3) Where the Ministry deducts any costs or expenses from the funds of a charity under subsection (2), the trustees of the charity or any person claiming to be interested may apply to the [<sup>F17</sup> Master (Taxing Office)] for an order for the taxation of those costs or expenses.

**F17** 1978 c.23

**34 Annual report by Ministry. N.I.**

- (1) The Ministry shall prepare an annual report of the proceedings of the Ministry under this Act[<sup>F18</sup> and the Charities (Northern Ireland) Order 1987].
- (2) The Ministry shall cause a copy of every report prepared under subsection (1) to be laid before each House of Parliament.

**F18** 1987 NI 19

**35 Interpretation. N.I.**

In this Act[<sup>F19</sup> and the Charities (Northern Ireland) Order 1987]

“charitable gift” means a gift for charitable purposes;

“charitable purposes” means purposes which are exclusively charitable according to the law of Northern Ireland;

“charity” means any institution, corporate or not, which is established for charitable purposes and is subject to the control of the Court in the exercise of the Court's jurisdiction with respect to charities;

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“the Court”, subject to [<sup>F20</sup> Article 14( b) of the County Courts (Northern Ireland) Order 1980 <sup>M4</sup>], means the High Court;

“fund” includes any interest, present or future, in any stock, shares, annuities or other securities or choses in action, and also includes money;

“gift” means any donation, devise or bequest;

“institution” includes any trust or undertaking;

“mortgage”, in relation to any registered land, means a charge created under section 40<sup>F21</sup> of the Local Registration of Title (Ireland) Act 1891;

“trustees” in relation to a charity, means the persons having the general control and management of the administration of the charity;

“trusts”, in relation to a charity, means the provisions establishing it as a charity and regulating its purposes and administration, whether those provisions take effect by way of trust or not;

“will” includes a codicil to a will.

**F19** 1987 NI 19

**F20** 1980 NI 3

**F21** 1970 c.18 (NI)

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**Marginal Citations**

**M4** 1980 NI 3

### 36 Saving for functions of Attorney-General. **N.I.**

Nothing in this Act<sup>F22</sup> or the Charities (Northern Ireland) Order 1987] shall affect any power conferred or duty imposed on the Attorney-General in relation to any charity, other than a power conferred or a duty imposed by an enactment repealed by this Act.

**F22** 1987 NI 19

*S. 37, with Schedule, effects repeals*

### 38 Short title and commencement. **N.I.**

(1) This Act may be cited as the Charities Act (Northern Ireland) 1964.

(2) *Commencement*



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N.I.

*Schedule—Repeals*

**Status:**

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**Changes to legislation:**

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