



2008 CHAPTER 12

PART 6

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

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

Concurrent jurisdiction with High Court for certain purposes

31.—(1) Subject to the provisions of this Act, the Commission may by order exercise the same jurisdiction and powers as are exercisable by the High Court in charity proceedings for the following purposes—

- (a) establishing a scheme for the administration of a charity;
- (b) appointing, discharging or removing a charity trustee or trustee for a charity, or removing an officer or employee;
- (c) vesting or transferring property, or requiring or entitling any person to call for or make any transfer of property or any payment.

(2) 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 Commission for it 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 Commission as if prepared under subsection (1) and without any further order of the Court.

(3) The Commission 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 Commission shall not exercise its 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); or
- (c) on the application of the Attorney General.

(5) In the case of a charity whose gross income does not in aggregate exceed £500 a year, the Commission may exercise its jurisdiction under this section on the application—

- (a) of any one or more of the charity trustees; or
- (b) of any person interested in the charity.

(6) Where, in the case of a charity, the Commission is 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 and the Commission has given the charity trustees an opportunity to make representations to it, the Commission may proceed as if an application for a scheme had been made by the charity but the Commission shall not have power in a case where it acts by virtue of this subsection to alter the purposes of a charity, unless 40 years have elapsed from the date of its foundation.

(7) Where—

- (a) a charity cannot apply to the Commission for a scheme by reason of any vacancy among the charity trustees or the absence or incapacity of any of them, but
- (b) such an application is made by such number of the charity trustees as the Commission considers appropriate in the circumstances of the case,

the Commission may nevertheless proceed as if the application were an application made by the charity.

(8) The Commission may on the application of any charity trustee or trustee for a charity exercise its jurisdiction under this section for the purpose of discharging that person from trusteeship.

(9) Before exercising any jurisdiction under this section otherwise than on an order of the Court, the Commission shall give notice of its intention to do so to each of the charity trustees, except any that cannot be found or has no known address 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.

(10) The Commission shall not exercise its jurisdiction under this section in any case (not referred to the Commission 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 Commission may consider more fit to be adjudicated on by the Court.

- (11) If the Department thinks it expedient to do so—
- (a) in consequence of changes in the value of money, or
 - (b) with a view to increasing the number of charities in respect of which the Commission may exercise its jurisdiction under this section in accordance with subsection (5),

it may by order amend that subsection by substituting a different sum for the sum for the time being specified there.

Further powers to make schemes or alter application of charitable property

32.—(1) Where it appears to the Commission that a scheme should be established for the administration of a charity, but also that it is necessary or desirable for the scheme to alter the provision made by an Act of the Parliament of the United Kingdom or Northern Ireland legislation establishing or regulating the charity or to make any other provision which goes or might go beyond the powers exercisable by the Commission apart from this section, or that it is for any reason proper for the scheme to be subject to review by the Assembly, then (subject to subsection (6)) the Commission may settle a scheme accordingly with a view to its being given effect under this section.

(2) A scheme settled by the Commission under this section may be given effect by order of the Department, and a draft of the order shall be laid before the Assembly.

(3) In the case of a scheme which goes beyond the powers exercisable apart from this section in altering a statutory provision contained in or having effect under any public general Act of Parliament of the United Kingdom or Northern Ireland legislation, the order shall not be made unless the draft has been approved by resolution of the Assembly.

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

(5) Where subsection (3) applies to a scheme, the order giving effect to it may direct that the scheme shall not be modified or superseded by a scheme brought into effect otherwise than under this section, and may also direct that that subsection shall apply to any scheme modifying or superseding the scheme to which the order gives effect.

(6) The Commission shall not proceed under this section without the like application and the like notice to the charity trustees, as would be required if it was proceeding (without an order of the Court) under section 31; but on any application for a scheme, or in a case where it acts by virtue of subsection (6)

or (7) of that section, the Commission may proceed under this section or that section as appears to it appropriate.

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

(8) Where the Commission is satisfied—

- (a) that the whole of the income of a charity cannot in existing circumstances be effectively applied for the purposes of the charity; and
- (b) that, if those circumstances continue, a scheme might be made for applying the surplus cy-près; and
- (c) that it is for any reason not yet desirable to make such a scheme;

then the Commission may by order authorise the charity trustees at their discretion (but subject to any conditions imposed by the order) to apply any accrued or accruing income for any purposes for which it might be made applicable by such a scheme, and any application authorised by the order shall be deemed to be within the purposes of the charity.

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

Power to act for protection of charities

33.—(1) Where, at any time after it has instituted an inquiry under section 22 with respect to any charity, the Commission is satisfied—

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

the Commission may of its own motion do one or more of the following things—

- (i) by order suspend any person who is a trustee, charity trustee, officer, agent or employee of the charity from the exercise of that person's office or employment pending consideration being given to that person's removal (whether under this section or otherwise);
- (ii) by order appoint such number of additional charity trustees as it considers necessary for the proper administration of the charity;
- (iii) by order vest any property held by or in trust for the charity in the official custodian, or require the persons in whom any such property is vested to

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transfer it to the official custodian, or appoint any person to transfer any such property to the official custodian;

- (iv) order any person who holds any property on behalf of the charity, or of any trustee for it, not to part with the property without the approval of the Commission;
- (v) order any debtor of the charity not to make any payment in or towards the discharge of liability to the charity without the approval of the Commission;
- (vi) by order restrict (notwithstanding anything in the trusts of the charity) 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 Commission;
- (vii) by order appoint (in accordance with section 35) an interim manager, who shall act as receiver and manager in respect of the property and affairs of the charity.

(2) Where, at any time after it has instituted an inquiry under section 22 with respect to any charity, the Commission is satisfied—

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

the Commission may of its own motion do either or both of the following things—

- (i) by order remove any trustee, charity trustee, officer, agent or employee of the charity who has been responsible for or privy to the misconduct or mismanagement or whose conduct has contributed to it or facilitated it;
- (ii) by order establish a scheme for the administration of the charity.

(3) The references in subsections (1) or (2) 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.

(4) The Commission may also remove a charity trustee by order made of its own motion—

- (a) where, within the last 5 years, the trustee—
 - (i) having previously been adjudged bankrupt or had estate sequestrated, has been discharged, or
 - (ii) having previously made a composition or arrangement with, or granted a trust deed for, creditors, has been discharged in respect of it;

- (b) where the trustee is a corporation in liquidation;
- (c) where the trustee is incapable of acting by reason of mental disorder within the meaning of the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#);
- (d) where the trustee has not acted, and will not declare willingness or unwillingness to act;
- (e) where the trustee is outside Northern Ireland or cannot be found or does not act, and that absence or failure to act impedes the proper administration of the charity.

(5) The Commission may by order made of its own motion appoint a person to be a charity trustee—

- (a) in place of a charity trustee removed by the Commission 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 Commission is of opinion that it is necessary to increase the number for the proper administration of the charity;
- (d) where the Commission is 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 Northern Ireland.

(6) The powers of the Commission under this section to remove or appoint charity trustees of its 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 Commission could make on the removal or appointment of a charity trustee by it under section 31.

(7) 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 31.

(8) The power of the Commission to make an order under subsection (1) (i) shall not be exercisable so as to suspend any person (P) from the exercise of office or employment for a period of more than 12 months; but (without prejudice to the generality of section 175(1)), any such order made in the case of P may make provision as respects the period of P's suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in P's name or otherwise act for P 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 otherwise than by virtue of subsection (1), the Commission shall give notice of its intention to do so to each of the charity trustees, except any that cannot be found or has no known address; and any such notice may be given by post and, if given by post, may be addressed to the recipient's last known address.

(10) The Commission shall, at such intervals as it thinks fit, review any order made by it under paragraph (i), or any of paragraphs (iii) to (vii), of subsection (1); and, if on any such review it appears to the Commission that it would be appropriate to discharge the order in whole or in part, the Commission shall so discharge it (whether subject to any savings or other transitional provisions or not).

(11) Any person who contravenes an order under subsection (1)(iv), (v) or (vi), is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(12) Subsection (11) shall not be taken to preclude the bringing of proceedings for breach of trust against any charity trustee or trustee for a charity in respect of a contravention of an order under subsection (1)(iv) or (vi) (whether proceedings in respect of the contravention are brought against that person under subsection (11) or not).

Power to suspend or remove trustees, etc. from membership of charity

34.—(1) This section applies where the Commission makes—

- (a) an order under section 33(1) suspending from office or employment any trustee, charity trustee, officer, agent or employee of a charity, or
- (b) an order under section 33(2) removing from office or employment any officer, agent or employee of a charity,

and the trustee, charity trustee, officer, agent or employee (as the case may be) is a member of the charity.

(2) If the order suspends the person in question from office or employment, the Commission may also make an order suspending that person's membership of the charity for the period for which that person is suspended from office or employment.

(3) If the order removes the person in question from office or employment, the Commission may also make an order—

- (a) terminating that person's membership of the charity, and
- (b) prohibiting that person from resuming membership of the charity without the Commission's consent.

(4) If an application for the Commission's consent under subsection (3)(b) is made 5 years or more after the order was made, the Commission must grant

the application unless satisfied that, by reason of any special circumstances, it should be refused.

Supplementary provisions relating to interim manager appointed for a charity

35.—(1) The Commission may under section 33(1)(vii) appoint to be interim manager in respect of a charity such person as it thinks fit.

(2) Without prejudice to the generality of section 175(1), any order made by the Commission under section 33(1)(vii) may make provision with respect to the functions to be discharged by the interim manager appointed by the order; and those functions shall be discharged by the interim manager under the supervision of the Commission.

(3) In connection with the discharge of those functions any such order may provide—

- (a) for the interim manager appointed by the order to have such powers and duties of the charity trustees of the charity concerned (whether arising under this Act or otherwise) as are specified in the order;
- (b) for any powers or duties exercisable or falling to be performed by the interim manager by virtue of paragraph (a) to be exercisable or performed by the interim manager to the exclusion of those trustees.

(4) Where a person has been appointed interim manager by any such order—

- (a) section 49 shall apply to that person and to that person's functions as a person so appointed as it applies to a charity trustee of the charity concerned and to the duties of a charity trustee as such; and
- (b) the Commission may apply to the Court for directions in relation to any particular matter arising in connection with the discharge of those functions.

(5) The Court may on an application under subsection (4)(b)—

- (a) give such directions, or
- (b) make such orders declaring the rights of any persons (whether before the Court or not),

as it thinks just; and the costs of any such application shall be paid by the charity concerned.

(6) Regulations made by the Department may make provision with respect to—

- (a) the appointment and removal of persons appointed in accordance with this section;
- (b) the remuneration of such persons out of the income of the charities concerned;

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(c) the making of reports to the Commission by such persons.

(7) Regulations under subsection (6) may, in particular, authorise the Commission—

- (a) to require a person so appointed to give security for the due discharge of that person's functions;
- (b) to determine the amount of that person's remuneration;
- (c) to allow any amount of remuneration in such circumstances as are prescribed by the regulations.

Power to give specific directions for protection of charity

36.—(1) This section applies where, at any time after the Commission has instituted an inquiry under section 22 with respect to any charity, it is satisfied as mentioned in section 33(1)(a) or (b).

(2) The Commission may by order direct—

- (a) the charity trustees,
- (b) any trustee for the charity,
- (c) any officer or employee of the charity, or
- (d) (if a body corporate) the charity itself,

to take any action specified in the order which the Commission considers to be expedient in the interests of the charity.

(3) An order under this section—

- (a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned, or by the charity, in relation to the administration of the charity or to its property, but
- (b) may not require any action to be taken which is prohibited by any statutory provision or expressly prohibited by the trusts of the charity or is inconsistent with its purposes.

(4) Anything done by a person or body under the authority of an order under this section shall be deemed to be properly done in the exercise of the powers mentioned in subsection (3)(a).

(5) Subsection (4) does not affect any contractual or other rights of any other person arising in respect of anything which has been done under the authority of such an order.

Power to direct application of charity property

37.—(1) This section applies where the Commission is satisfied—

- (a) that a person or persons in possession or control of any property held by or on trust for a charity is or are unwilling to apply it properly for the purposes of the charity, and
 - (b) that it is necessary or desirable to make an order under this section for the purpose of securing a proper application of that property for the purposes of the charity.
- (2) The Commission may by order direct the person or persons concerned to apply the property in such manner as is specified in the order.
- (3) An order under this section—
- (a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned in relation to the property, but
 - (b) may not require any action to be taken which is prohibited by any statutory provision or expressly prohibited by the trusts of the charity.
- (4) Anything done by a person under the authority of an order under this section shall be deemed to be properly done in the exercise of the powers mentioned in subsection (3)(a).
- (5) Subsection (4) does not affect any contractual or other rights of any other person arising in respect of anything which has been done under the authority of such an order.

Copy of order under section 33, 34, 36 or 37, and Commission's reasons, to be sent to charity

- 38.—**(1) Where the Commission makes an order under section 33, 34, 36 or 37, it must send the documents mentioned in subsection (2)—
- (a) to the charity concerned (if a body corporate), or
 - (b) (if not) to each of the charity trustees.
- (2) The documents are—
- (a) a copy of the order, and
 - (b) a statement of the Commission's reasons for making it.
- (3) The documents must be sent to the charity or charity trustees as soon as practicable after the making of the order.
- (4) The Commission need not, however, comply with subsection (3) in relation to the documents, or (as the case may be) the statement of its reasons, if it considers that to do so—
- (a) would prejudice any inquiry or investigation, or
 - (b) would not be in the interests of the charity;

but, once the Commission considers that this is no longer the case, it must send the documents, or (as the case may be) the statement, to the charity or charity trustees as soon as practicable.

(5) Nothing in this section requires any document to be sent to a person who cannot be found or who has no known address.

Publicity relating to schemes

39.—(1) The Commission may not—

- (a) make any order under this Act to establish a scheme for the administration of a charity, or
- (b) submit such a scheme to the Court or the Department for an order giving it effect,

unless, before doing so, the Commission has complied with the publicity requirement in subsection (2).

This is subject to any disapplication of that requirement under subsection (4).

(2) The publicity requirement is that the Commission must give public notice of its proposals, inviting representations to be made to it within a period specified in the notice.

(3) The time when any such notice is given or any such communication takes place is to be decided by the Commission.

(4) The Commission may determine that the publicity requirement is not to apply in relation to a particular scheme if it is satisfied that—

- (a) by reason of the nature of the scheme, or
- (b) for any other reason,

compliance with the requirement is unnecessary.

(5) Where the Commission gives public notice of any proposals under this section, the Commission—

- (a) must take into account any representations made to it within the period specified in the notice, and
- (b) may (without further notice) proceed with the proposals either without modifications or with such modifications as it thinks desirable.

(6) Where the Commission makes an order under this Act to establish a scheme for the administration of a charity, a copy of the order must be available, for at least a month after the order is published, for public inspection at all reasonable times at the Commission's office.

(7) Any public notice of any proposals which is to be given under this section—

- (a) is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission thinks sufficient and appropriate, and
- (b) is to be given in such manner as the Commission thinks sufficient and appropriate.

Publicity for orders relating to trustees or other individuals

40.—(1) The Commission may not make any order under this Act to appoint, discharge or remove a charity trustee or trustee for a charity, other than—

- (a) an order relating to the official custodian, or
- (b) an order under section 33(1)(ii),

unless, before doing so, the Commission has complied with the publicity requirement in subsection (2).

This is subject to any disapplication of that requirement under subsection (4).

(2) The publicity requirement is that the Commission must give public notice of its proposals, inviting representations to be made to it within a period specified in the notice.

(3) The time when any such notice is given is to be decided by the Commission.

(4) The Commission may determine that the publicity requirement is not to apply in relation to a particular order if it is satisfied that for any reason compliance with the requirement is unnecessary.

(5) Before the Commission makes an order under this Act to remove, without the consent of the person concerned, a person who is—

- (a) a charity trustee or trustee for a charity, or
- (b) an officer, agent or employee of a charity,

the Commission must give to that person not less than one month's notice of its proposals, inviting representations to be made to it within a period specified in the notice.

This does not apply if the person cannot be found or has no known address.

(6) Where the Commission gives notice of any proposals under this section, the Commission—

- (a) must take into account any representations made to it within the period specified in the notice, and
- (b) may (without further notice) proceed with the proposals either without modifications or with such modifications as it thinks desirable.

(7) Any notice of any proposals which is to be given under this section—

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- (a) is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission thinks sufficient and appropriate, and
 - (b) (in the case of a public notice) is to be given in such manner as the Commission thinks sufficient and appropriate.
- (8) Any notice to be given under subsection (5)—
- (a) may be given by post, and
 - (b) if given by post, may be addressed to the recipient's last known address.