



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.

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

Changes to legislation: There are currently no known outstanding effects for the Charities Act (Northern Ireland) 2008, Section 33. (See end of Document for details)

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;^{F1}or]

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- [^{F1}(iii) having previously been the subject of a debt relief order, has been discharged from all the qualifying debts under the debt relief order;]
- (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).

Textual Amendments

- F1** S. 33(4)(a)(iii) and preceding word added (19.1.2013) by [Charities Act \(Northern Ireland\) 2013 \(c. 3\), ss. 3\(2\), 10\(1\)](#)
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Modifications etc. (not altering text)

- C1** S. 33 (except s. 33(1)(b)(iii)) modified (18.2.2011) by [Charities Act 2008 \(Transitional Provision\) Order \(Northern Ireland\) 2011 \(S.R. 2011/12\), art. 2, Sch.](#)
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Commencement Information

- I1** S. 33 partly in operation; s. 33 not in operation at Royal Assent see s. 185(1); s. 33 (except s. 33(1)(b)(iii)) in operation at 18.2.2011 by [S.R. 2011/11, art. 2, Sch.](#)

Changes to legislation:

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