



# Charities Act 1993

## 1993 CHAPTER 10

### PART IV

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

##### *Property vested in official custodian*

#### **21 Entrusting charity property to official custodian, and termination of trust**

- (1) The court may by order—
  - (a) vest in the official custodian any land held by or in trust for a charity;
  - (b) authorise or require the persons in whom any such land is vested to transfer it to him; or
  - (c) appoint any person to transfer any such land to him;but this subsection does not apply to any interest in land by way of mortgage or other security.
- (2) Where property is vested in the official custodian in trust for a charity, the court may make an order discharging him from the trusteeship as respects all or any of that property.
- (3) Where the official custodian is discharged from his trusteeship of any property, or the trusts on which he holds any property come to an end, the court may make such vesting orders and give such directions as may seem to the court to be necessary or expedient in consequence.
- (4) No person shall be liable for any loss occasioned by his acting in conformity with an order under this section or by his giving effect to anything done in pursuance of such an order, or be excused from so doing by reason of the order having been in any respect improperly obtained.

## **22 Supplementary provisions as to property vested in official custodian**

- (1) Subject to the provisions of this Act, where property is vested in the official custodian in trust for a charity, he shall not exercise any powers of management, but he shall as trustee of any property have all the same powers, duties and liabilities, and be entitled to the same rights and immunities, and be subject to the control and orders of the court, as a corporation appointed custodian trustee under section 4 of the Public Trustee Act 1906 except that he shall have no power to charge fees.
- (2) Subject to subsection (3) below, where any land is vested in the official custodian in trust for a charity, the charity trustees shall have power in his name and on his behalf to execute and do all assurances and things which they could properly execute or do in their own name and on their own behalf if the land were vested in them.
- (3) If any land is so vested in the official custodian by virtue of an order under section 18 above, the power conferred on the charity trustees by subsection (2) above shall not be exercisable by them in relation to any transaction affecting the land, unless the transaction is authorised by order of the court or of the Commissioners.
- (4) Where any land is vested in the official custodian in trust for a charity, the charity trustees shall have the like power to make obligations entered into by them binding on the land as if it were vested in them; and any covenant, agreement or condition which is enforceable by or against the custodian by reason of the land being vested in him shall be enforceable by or against the charity trustees as if the land were vested in them.
- (5) In relation to a corporate charity, subsections (2), (3) and (4) above shall apply with the substitution of references to the charity for references to the charity trustees.
- (6) Subsections (2), (3) and (4) above shall not authorise any charity trustees or charity to impose any personal liability on the official custodian.
- (7) Where the official custodian is entitled as trustee for a charity to the custody of securities or documents of title relating to the trust property, he may permit them to be in the possession or under the control of the charity trustees without thereby incurring any liability.

## **23 Divestment in the case of land subject to Reverter of Sites Act 1987**

- (1) Where—
  - (a) any land is vested in the official custodian in trust for a charity, and
  - (b) it appears to the Commissioners that section 1 of the Reverter of Sites Act 1987 (right of reverter replaced by trust for sale) will, or is likely to, operate in relation to the land at a particular time or in particular circumstances,
 the jurisdiction which, under section 16 above, is exercisable by the Commissioners for the purpose of discharging a trustee for a charity may, at any time before section 1 of that Act (“the 1987 Act”) operates in relation to the land, be exercised by them of their own motion for the purpose of—
  - (i) making an order discharging the official custodian from his trusteeship of the land, and
  - (ii) making such vesting orders and giving such directions as appear to them to be necessary or expedient in consequence.
- (2) Where—

- (a) section 1 of the 1987 Act has operated in relation to any land which, immediately before the time when that section so operated, was vested in the official custodian in trust for a charity, and
  - (b) the land remains vested in him but on the trust arising under that section,the court or the Commissioners (of their own motion) may—
  - (i) make an order discharging the official custodian from his trusteeship of the land, and
  - (ii) (subject to the following provisions of this section) make such vesting orders and give such directions as appear to it or them to be necessary or expedient in consequence.
- (3) Where any order discharging the official custodian from his trusteeship of any land—
  - (a) is made by the court under section 21(2) above, or by the Commissioners under section 16 above, on the grounds that section 1 of the 1987 Act will, or is likely to, operate in relation to the land, or
  - (b) is made by the court or the Commissioners under subsection (2) above,the persons in whom the land is to be vested on the discharge of the official custodian shall be the relevant charity trustees (as defined in subsection (4) below), unless the court or (as the case may be) the Commissioners is or are satisfied that it would be appropriate for it to be vested in some other persons.
- (4) In subsection (3) above “the relevant charity trustees” means—
  - (a) in relation to an order made as mentioned in paragraph (a) of that subsection, the charity trustees of the charity in trust for which the land is vested in the official custodian immediately before the time when the order takes effect, or
  - (b) in relation to an order made under subsection (2) above, the charity trustees of the charity in trust for which the land was vested in the official custodian immediately before the time when section 1 of the 1987 Act operated in relation to the land.
- (5) Where—
  - (a) section 1 of the 1987 Act has operated in relation to any such land as is mentioned in subsection (2)(a) above, and
  - (b) the land remains vested in the official custodian as mentioned in subsection (2) (b) above,then (subject to subsection (6) below), all the powers, duties and liabilities that would, apart from this section, be those of the official custodian as trustee for sale of the land shall instead be those of the charity trustees of the charity concerned; and those trustees shall have power in his name and on his behalf to execute and do all assurances and things which they could properly execute or do in their own name and on their own behalf if the land were vested in them.
- (6) Subsection (5) above shall not be taken to require or authorise those trustees to sell the land at a time when it remains vested in the official custodian.
- (7) Where—
  - (a) the official custodian has been discharged from his trusteeship of any land by an order under subsection (2) above, and
  - (b) the land has, in accordance with subsection (3) above, been vested in the charity trustees concerned or (as the case may be) in any persons other than those trustees,

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*Status: This is the original version (as it was originally enacted).*

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the land shall be held by those trustees, or (as the case may be) by those persons, as trustees for sale on the terms of the trust arising under section 1 of the 1987 Act.

- (8) The official custodian shall not be liable to any person in respect of any loss or misapplication of any land vested in him in accordance with that section unless it is occasioned by or through any wilful neglect or default of his or of any person acting for him; but the Consolidated Fund shall be liable to make good to any person any sums for which the official custodian may be liable by reason of any such neglect or default.
- (9) In this section any reference to section 1 of the 1987 Act operating in relation to any land is a reference to a trust for sale arising in relation to the land under that section.