



# Charities Act 1993

## 1993 CHAPTER 10

### PART IV

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

*Powers of Commissioners to make schemes and act for protection of charities etc.*

#### **18 Power to act for protection of charities**

- (1) Where, at any time after they have instituted an inquiry under section 8 above with respect to any charity, the Commissioners are 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 Commissioners may of their own motion do one or more of the following things—
- (i) by order suspend any trustee, charity trustee, officer, agent or employee of the charity from the exercise of his office or employment pending consideration being given to his removal (whether under this section or otherwise);
    - (ii) by order appoint such number of additional charity trustees as they consider 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 transfer it to him, or appoint any person to transfer any such property to him;
    - (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 Commissioners;

- (v) order any debtor of the charity not to make any payment in or towards the discharge of his liability to the charity without the approval of the Commissioners;
  - (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 Commissioners;
  - (vii) by order appoint (in accordance with section 19 below) a receiver and manager in respect of the property and affairs of the charity.
- (2) Where, at any time after they have instituted an inquiry under section 8 above with respect to any charity, the Commissioners are 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 Commissioners may of their 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 has by his conduct contributed to it or facilitated it;
  - (ii) by order establish a scheme for the administration of the charity.
- (3) The references in subsection (1) or (2) above to misconduct or mismanagement shall (notwithstanding anything in the trusts of the charity) extend to the employment for the remuneration or reward of persons acting in the affairs of the charity, or for other administrative purposes, of sums which are excessive in relation to the property which is or is likely to be applied or applicable for the purposes of the charity.
- (4) The Commissioners may also remove a charity trustee by order made of their own motion—
  - (a) where, within the last five years, the trustee—
    - (i) having previously been adjudged bankrupt or had his estate sequestrated, has been discharged, or
    - (ii) having previously made a composition or arrangement with, or granted a trust deed for, his 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 Act 1983;
  - (d) where the trustee has not acted, and will not declare his willingness or unwillingness to act;
  - (e) where the trustee is outside England and Wales or cannot be found or does not act, and his absence or failure to act impedes the proper administration of the charity.
- (5) The Commissioners may by order made of their own motion appoint a person to be a charity trustee—
  - (a) in place of a charity trustee removed by them under this section or otherwise;

- (b) where there are no charity trustees, or where by reason of vacancies in their number or the absence or incapacity of any of their number the charity cannot apply for the appointment;
  - (c) where there is a single charity trustee, not being a corporation aggregate, and the Commissioners are of opinion that it is necessary to increase the number for the proper administration of the charity;
  - (d) where the Commissioners are of opinion that it is necessary for the proper administration of the charity to have an additional charity trustee because one of the existing charity trustees who ought nevertheless to remain a charity trustee either cannot be found or does not act or is outside England and Wales.
- (6) The powers of the Commissioners under this section to remove or appoint charity trustees of their own motion shall include power to make any such order with respect to the vesting in or transfer to the charity trustees of any property as the Commissioners could make on the removal or appointment of a charity trustee by them under section 16 above.
- (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 16 above.
- (8) Subject to subsection (9) below, subsections (11) to (13) of section 16 above shall apply to orders under this section as they apply to orders under that section.
- (9) The requirement to obtain any such certificate or leave as is mentioned in section 16(13) above shall not apply to—
  - (a) an appeal by a charity or any of the charity trustees of a charity against an order under subsection (1)(vii) above appointing a receiver and manager in respect of the charity's property and affairs, or
  - (b) an appeal by a person against an order under subsection (2)(i) or (4)(a) above removing him from his office or employment.
- (10) Subsection (14) of section 16 above shall apply to an order under this section which establishes a scheme for the administration of a charity as it applies to such an order under that section.
- (11) The power of the Commissioners to make an order under subsection (1)(i) above shall not be exercisable so as to suspend any person from the exercise of his office or employment for a period of more than twelve months; but (without prejudice to the generality of section 89(1) below), any such order made in the case of any person may make provision as respects the period of his suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him and, in the case of a charity trustee, for adjusting any rules governing the proceedings of the charity trustees to take account of the reduction in the number capable of acting.
- (12) Before exercising any jurisdiction under this section otherwise than by virtue of subsection (1) above, the Commissioners shall give notice of their intention to do so to each of the charity trustees, except any that cannot be found or has no known address in the United Kingdom; and any such notice may be given by post and, if given by post, may be addressed to the recipient's last known address in the United Kingdom.
- (13) The Commissioners shall, at such intervals as they think fit, review any order made by them under paragraph (i), or any of paragraphs (iii) to (vii), of subsection (1) above; and, if on any such review it appears to them that it would be appropriate to discharge

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

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the order in whole or in part, they shall so discharge it (whether subject to any savings or other transitional provisions or not).

- (14) If any person contravenes an order under subsection (1)(iv), (v) or (vi) above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (15) Subsection (14) above 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) above (whether proceedings in respect of the contravention are brought against him under subsection (14) above or not).
- (16) This section shall not apply to an exempt charity.