



# Charities Act 2011

## 2011 CHAPTER 25

### PART 6

#### CY-PRÈS POWERS AND ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT AND COMMISSION

##### *Legal proceedings relating to charities*

#### **113 Petitions for winding up charities under Insolvency Act**

- (1) This section applies where a charity may be wound up by the High Court under the Insolvency Act 1986.
- (2) A petition for the charity to be wound up under the 1986 Act by any court in England or Wales having jurisdiction may be presented by the Attorney General, as well as by any person authorised by that Act.
- (3) Such a petition may also be presented by the Commission if, at any time after it has instituted an inquiry under section 46 with respect to the charity, it is satisfied either as mentioned in section 76(1)(a) (misconduct or mismanagement etc.) or as mentioned in section 76(1)(b) (need to protect property etc.).
- (4) The power exercisable by the Commission by virtue of this section is exercisable—
  - (a) by the Commission of its own motion, but
  - (b) only with the agreement of the Attorney General on each occasion.

#### **114 Proceedings by the Commission**

- (1) Subject to subsection (2), the Commission may exercise the same powers with respect to—
  - (a) the taking of legal proceedings with reference to charities or the property or affairs of charities, or
  - (b) the compromise of claims with a view to avoiding or ending such proceedings,

as are exercisable by the Attorney General acting ex officio.

- (2) Subsection (1) does not apply to the power of the Attorney General under section 113(2) to present a petition for the winding up of a charity.
- (3) The practice and procedure to be followed in relation to any proceedings taken by the Commission under subsection (1) are the same in all respects (and in particular as regards costs) as if they were proceedings taken by the Attorney General acting ex officio.
- (4) No rule of law or practice is to be treated as requiring the Attorney General to be a party to any such proceedings.
- (5) The powers exercisable by the Commission by virtue of this section are exercisable—
  - (a) by the Commission of its own motion, but
  - (b) only with the agreement of the Attorney General on each occasion.

## **115 Proceedings by other persons**

- (1) Charity proceedings may be taken with reference to a charity by—
  - (a) the charity,
  - (b) any of the charity trustees,
  - (c) any person interested in the charity, or
  - (d) if it is a local charity, any two or more inhabitants of the area of the charity,
 but not by any other person.
- (2) Subject to the following provisions of this section, no charity proceedings relating to a charity are to be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of the Commission.
- (3) The Commission must not, without special reasons, authorise the taking of charity proceedings where in its opinion the case can be dealt with by the Commission under the powers of this Act other than those conferred by section 114.
- (4) This section does not require an order for the taking of proceedings—
  - (a) in a pending cause or matter, or
  - (b) for the bringing of any appeal.
- (5) Where subsections (1) to (4) require the taking of charity proceedings to be authorised by an order of the Commission, the proceedings may nevertheless be entertained or proceeded with if, after the order had been applied for and refused, leave to take the proceedings was obtained from one of the judges of the High Court attached to the Chancery Division.
- (6) Nothing in subsections (1) to (5) applies—
  - (a) to the taking of proceedings by the Attorney General, with or without a relator, or
  - (b) to the taking of proceedings by the Commission in accordance with section 114.
- (7) If it appears to the Commission, on an application for an order under this section or otherwise, that it is desirable—
  - (a) for legal proceedings to be taken with reference to any charity or its property or affairs, and

- (b) for the proceedings to be taken by the Attorney General, the Commission must so inform the Attorney General and send the Attorney General such statements and particulars as the Commission thinks necessary to explain the matter.
- (8) In this section “charity proceedings” means proceedings in any court in England or Wales brought under—
  - (a) the court’s jurisdiction with respect to charities, or
  - (b) the court’s jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes.