



Charities Act 1993

1993 CHAPTER 10

PART IV

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

Additional powers of Commissioners

26 Power to authorise dealings with charity property etc

- (1) Subject to the provisions of this section, where it appears to the Commissioners that any action proposed or contemplated in the administration of a charity is expedient in the interests of the charity, they may by order sanction that action, whether or not it would otherwise be within the powers exercisable by the charity trustees in the administration of the charity; and anything done under the authority of such an order shall be deemed to be properly done in the exercise of those powers.
- (2) An order under this section may be made so as to authorise a particular transaction, compromise or the like, or a particular application of property, or so as to give a more general authority, and (without prejudice to the generality of subsection (1) above) may authorise a charity to use common premises, or employ a common staff, or otherwise combine for any purpose of administration, with any other charity.
- (3) An order under this section may give directions as to the manner in which any expenditure is to be borne and as to other matters connected with or arising out of the action thereby authorised; and where anything is done in pursuance of an authority given by any such order, any directions given in connection therewith shall be binding on the charity trustees for the time being as if contained in the trusts of the charity; but any such directions may on the application of the charity be modified or superseded by a further order.
- (4) Without prejudice to the generality of subsection (3) above, the directions which may be given by an order under this section shall in particular include directions for meeting any expenditure out of a specified fund, for charging any expenditure to capital or to income, for requiring expenditure charged to capital to be recouped out of income

within a specified period, for restricting the costs to be incurred at the expense of the charity, or for the investment of moneys arising from any transaction.

- (5) An order under this section may authorise any act notwithstanding that it is prohibited by any of the disabling Acts mentioned in subsection (6) below or that the trusts of the charity provide for the act to be done by or under the authority of the court; but no such order shall authorise the doing of any act expressly prohibited by Act of Parliament other than the disabling Acts or by the trusts of the charity or shall extend or alter the purposes of the charity.
- (6) The Acts referred to in subsection (5) above as the disabling Acts are the Ecclesiastical Leases Act 1571, the Ecclesiastical Leases Act 1572, the Ecclesiastical Leases Act 1575 and the Ecclesiastical Leases Act 1836.
- (7) An order under this section shall not confer any authority in relation to a building which has been consecrated and of which the use or disposal is regulated, and can be further regulated, by a scheme having effect under the Union of Benefices Measures 1923 to 1952, the Reorganisation Areas Measures 1944 and 1954, the Pastoral Measure 1968 or the Pastoral Measure 1983, the reference to a building being taken to include part of a building and any land which under such a scheme is to be used or disposed of with a building to which the scheme applies.

27 Power to authorise ex gratia payments etc

- (1) Subject to subsection (3) below, the Commissioners may by order exercise the same power as is exercisable by the Attorney General to authorise the charity trustees of a charity—
 - (a) to make any application of property of the charity, or
 - (b) to waive to any extent, on behalf of the charity, its entitlement to receive any property,
 in a case where the charity trustees—
 - (i) (apart from this section) have no power to do so, but
 - (ii) in all the circumstances regard themselves as being under a moral obligation to do so.
- (2) The power conferred on the Commissioners by subsection (1) above shall be exercisable by them under the supervision of, and in accordance with such directions as may be given by, the Attorney General; and any such directions may in particular require the Commissioners, in such circumstances as are specified in the directions—
 - (a) to refrain from exercising that power; or
 - (b) to consult the Attorney General before exercising it.
- (3) Where—
 - (a) an application is made to the Commissioners for them to exercise that power in a case where they are not precluded from doing so by any such directions, but
 - (b) they consider that it would nevertheless be desirable for the application to be entertained by the Attorney General rather than by them,
 they shall refer the application to the Attorney General.
- (4) It is hereby declared that where, in the case of any application made to them as mentioned in subsection (3)(a) above, the Commissioners determine the application by refusing to authorise charity trustees to take any action falling within subsection (1) (a) or (b) above, that refusal shall not preclude the Attorney General, on an application

subsequently made to him by the trustees, from authorising the trustees to take that action.

28 Power to give directions about dormant bank accounts of charities

- (1) Where the Commissioners—
 - (a) are informed by a relevant institution—
 - (i) that it holds one or more accounts in the name of or on behalf of a particular charity (“the relevant charity”), and
 - (ii) that the account, or (if it so holds two or more accounts) each of the accounts, is dormant, and
 - (b) are unable, after making reasonable inquiries, to locate that charity or any of its trustees,they may give a direction under subsection (2) below.
- (2) A direction under this subsection is a direction which—
 - (a) requires the institution concerned to transfer the amount, or (as the case may be) the aggregate amount, standing to the credit of the relevant charity in the account or accounts in question to such other charity as is specified in the direction in accordance with subsection (3) below; or
 - (b) requires the institution concerned to transfer to each of two or more other charities so specified in the direction such part of that amount or aggregate amount as is there specified in relation to that charity.
- (3) The Commissioners may specify in a direction under subsection (2) above such other charity or charities as they consider appropriate, having regard, in a case where the purposes of the relevant charity are known to them, to those purposes and to the purposes of the other charity or charities; but the Commissioners shall not so specify any charity unless they have received from the charity trustees written confirmation that those trustees are willing to accept the amount proposed to be transferred to the charity.
- (4) Any amount received by a charity by virtue of this section shall be received by the charity on terms that—
 - (a) it shall be held and applied by the charity for the purposes of the charity, but
 - (b) it shall, as property of the charity, nevertheless be subject to any restrictions on expenditure to which it was subject as property of the relevant charity.
- (5) Where—
 - (a) the Commissioners have been informed as mentioned in subsection (1)(a) above by any relevant institution, and
 - (b) before any transfer is made by the institution in pursuance of a direction under subsection (2) above, the institution has, by reason of any circumstances, cause to believe that the account, or (as the case may be) any of the accounts, held by it in the name of or on behalf of the relevant charity is no longer dormant,

the institution shall forthwith notify those circumstances in writing to the Commissioners; and, if it appears to the Commissioners that the account or accounts in question is or are no longer dormant, they shall revoke any direction under subsection (2) above which has previously been given by them to the institution with respect to the relevant charity.

- (6) The receipt of any charity trustees or trustee for a charity in respect of any amount received from a relevant institution by virtue of this section shall be a complete discharge of the institution in respect of that amount.
- (7) No obligation as to secrecy or other restriction on disclosure (however imposed) shall preclude a relevant institution from disclosing any information to the Commissioners for the purpose of enabling them to discharge their functions under this section.
- (8) For the purposes of this section—
- (a) an account is dormant if no transaction, other than—
 - (i) a transaction consisting in a payment into the account, or
 - (ii) a transaction which the institution holding the account has itself caused to be effected,
 has been effected in relation to the account within the period of five years immediately preceding the date when the Commissioners are informed as mentioned in paragraph (a) of subsection (1) above;
 - (b) a “relevant institution” means—
 - (i) the Bank of England;
 - (ii) an institution which is authorised by the Bank of England to operate a deposit-taking business under Part I of the Banking Act 1987;
 - (iii) a European deposit-taker as defined in regulation 82(3) of the Banking Coordination (Second Council Directive) Regulations 1992;
 - (iv) a building society which is authorised by the Building Societies Commission under section 9 of the Building Societies Act 1986 to raise money from its members; or
 - (v) such other institution mentioned in Schedule 2 to the Banking Act 1987 as the Secretary of State may prescribe by regulations; and
 - (c) references to the transfer of any amount to a charity are references to its transfer—
 - (i) to the charity trustees, or
 - (ii) to any trustee for the charity,
 as the charity trustees may determine (and any reference to any amount received by a charity shall be construed accordingly).
- (9) For the purpose of determining the matters in respect of which any of the powers conferred by section 8 or 9 above may be exercised it shall be assumed that the Commissioners have no functions under this section in relation to accounts to which this subsection applies (with the result that, for example, a relevant institution shall not, in connection with the functions of the Commissioners under this section, be required under section 8(3)(a) above to furnish any statements, or answer any questions or inquiries, with respect to any such accounts held by the institution).

This subsection applies to accounts which are dormant accounts by virtue of subsection (8)(a) above but would not be such accounts if sub-paragraph (i) of that provision were omitted.

- (10) Subsection (1) above shall not apply to any account held in the name of or on behalf of an exempt charity.

29 Power to advise charity trustees

- (1) The Commissioners may on the written application of any charity trustee give him their opinion or advice on any matter affecting the performance of his duties as such.
- (2) A charity trustee or trustee for a charity acting in accordance with the opinion or advice of the Commissioners given under this section with respect to the charity shall be deemed, as regards his responsibility for so acting, to have acted in accordance with his trust, unless, when he does so, either—
 - (a) he knows or has reasonable cause to suspect that the opinion or advice was given in ignorance of material facts; or
 - (b) the decision of the court has been obtained on the matter or proceedings are pending to obtain one.

30 Powers for preservation of charity documents

- (1) The Commissioners may provide books in which any deed, will or other document relating to a charity may be enrolled.
- (2) The Commissioners may accept for safe keeping any document of or relating to a charity, and the charity trustees or other persons having the custody of documents of or relating to a charity (including a charity which has ceased to exist) may with the consent of the Commissioners deposit them with the Commissioners for safe keeping, except in the case of documents required by some other enactment to be kept elsewhere.
- (3) Where a document is enrolled by the Commissioners or is for the time being deposited with them under this section, evidence of its contents may be given by means of a copy certified by any officer of the Commissioners generally or specially authorised by them to act for this purpose; and a document purporting to be such a copy shall be received in evidence without proof of the official position, authority or handwriting of the person certifying it or of the original document being enrolled or deposited as aforesaid.
- (4) Regulations made by the Secretary of State may make provision for such documents deposited with the Commissioners under this section as may be prescribed by the regulations to be destroyed or otherwise disposed of after such period or in such circumstances as may be so prescribed.
- (5) Subsections (3) and (4) above shall apply to any document transmitted to the Commissioners under section 9 above and kept by them under subsection (3) of that section, as if the document had been deposited with them for safe keeping under this section.

31 Power to order taxation of solicitor's bill

- (1) The Commissioners may order that a solicitor's bill of costs for business done for a charity, or for charity trustees or trustees for a charity, shall be taxed, together with the costs of the taxation, by a taxing officer in such division of the High Court as may be specified in the order, or by the taxing officer of any other court having jurisdiction to order the taxation of the bill.
- (2) On any order under this section for the taxation of a solicitor's bill the taxation shall proceed, and the taxing officer shall have the same powers and duties, and the costs

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of the taxation shall be borne, as if the order had been made, on the application of the person chargeable with the bill, by the court in which the costs are taxed.

- (3) No order under this section for the taxation of a solicitor's bill shall be made after payment of the bill unless the Commissioners are of opinion that it contains exorbitant charges; and no such order shall in any case be made where the solicitor's costs are not subject to taxation on an order of the High Court by reason either of an agreement as to his remuneration or the lapse of time since payment of the bill.