



Charities Act 2011

2011 CHAPTER 25

PART 6

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

Power to authorise dealings with charity property, ex gratia payments etc.

105 Power to authorise dealings with charity property etc.

- (1) Subject to the provisions of this section, where it appears to the Commission that any action proposed or contemplated in the administration of a charity is expedient in the interests of the charity, the Commission 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.
- (2) Anything done under the authority of an order under this section is to be treated as properly done in the exercise of those powers.
- (3) An order under this section—
 - (a) 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
 - (b) 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.

Paragraph (b) does not affect the generality of subsection (1).
- (4) An order under this section may give directions—
 - (a) as to the manner in which any expenditure is to be borne, and
 - (b) as to other matters connected with or arising out of the action authorised by the order.

- (5) Where anything is done in pursuance of an authority given by an order under this section, any directions given in connection with that authority—
- (a) are binding on the charity trustees for the time being as if contained in the trusts of the charity, but
 - (b) may on the application of the charity be modified or superseded by a further order.
- (6) The directions which may be given by an order under this section in particular include directions—
- (a) for meeting any expenditure out of a specified fund,
 - (b) for charging any expenditure to capital or to income,
 - (c) for requiring expenditure charged to capital to be recouped out of income within a specified period,
 - (d) for restricting the costs to be incurred at the expense of the charity, or
 - (e) for the investment of money arising from any transaction.
- This does not affect the generality of subsection (4).
- (7) An order under this section may authorise any act even though—
- (a) it is prohibited by the Ecclesiastical Leases Act 1836, or
 - (b) the trusts of the charity provide for the act to be done by or under the authority of the court.
- (8) But an order under this section may not—
- (a) authorise the doing of any act expressly prohibited by any Act other than the Ecclesiastical Leases Act 1836, or by the trusts of the charity, or
 - (b) extend or alter the purposes of the charity.
- (9) In the case of a charitable company, an order under this section may authorise an act even though it involves the breach of a duty imposed on a director of the company under Chapter 2 of Part 10 of the Companies Act 2006 (general duties of directors).
- (10) An order under this section does 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 or treated as having effect under or by virtue of the Mission and Pastoral Measure 2011.
- (11) The reference in subsection (10) to a building is to be treated as including—
- (a) part of a building, and
 - (b) any land which under such a scheme is to be used or disposed of with a building to which the scheme applies.

106 Power to authorise ex gratia payments etc.

- (1) Subject to subsection (5), the Commission may by order exercise the same power as is exercisable by the Attorney General to authorise the charity trustees of a charity to take any action falling within subsection (2)(a) or (b) in a case where the charity trustees—
- (a) (apart from this section) have no power to take the action, but
 - (b) in all the circumstances regard themselves as being under a moral obligation to take it.
- (2) The actions are—

- (a) making any application of property of the charity, or
 - (b) waiving to any extent, on behalf of the charity, its entitlement to receive any property.
- (3) The power conferred on the Commission by subsection (1) is exercisable by the Commission under the supervision of, and in accordance with such directions as may be given by, the Attorney General.
- (4) Any such directions may in particular require the Commission, in such circumstances as are specified in the directions—
 - (a) to refrain from exercising the power conferred by subsection (1), or
 - (b) to consult the Attorney General before exercising it.
- (5) Where—
 - (a) an application is made to the Commission for it to exercise the power conferred by subsection (1) in a case where it is not precluded from doing so by any such directions, but
 - (b) the Commission considers that it would nevertheless be desirable for the application to be entertained by the Attorney General rather than by the Commission,the Commission must refer the application to the Attorney General.
- (6) It is hereby declared that where—
 - (a) an application is made to the Commission as mentioned in subsection (5)(a), and
 - (b) the Commission determines the application by refusing to authorise charity trustees to take any action falling within subsection (2)(a) or (b),that refusal does not preclude the Attorney General, on an application subsequently made to the Attorney General by the charity trustees, from authorising them to take that action.