



# Charities Act 1960

## 1960 CHAPTER 58

### PART III

#### APPLICATION OF PROPERTY CY-PRÈS, AND ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT AND CENTRAL AUTHORITIES

##### *Extended powers of court, and variation of charters*

### 13 Occasions for applying property cy-près

- (1) Subject to subsection (2) below, the circumstances in which the original purposes of a charitable gift can be altered to allow the property given or part of it to be applied cy-près shall be as follows:—
- (a) where the original purposes, in whole or in part.—
    - (i) have been as far as may be fulfilled ; or
    - (ii) cannot be carried out, or not according to the directions given and to the spirit of the gift; or
  - (b) where the original purposes provide a use for part only of the property available by virtue of the gift; or
  - (c) where the property available by virtue of the gift and other property applicable for similar purposes can be more effectively used in conjunction, and to that end can suitably, regard being had to the spirit of the gift, be made applicable to common purposes; or
  - (d) where the original purposes were laid down by reference to an area which then was but has since ceased to be a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason since ceased to be suitable, regard being had to the spirit of the gift, or to be practical in administering the gift; or
  - (e) where the original purposes, in whole or in part, have, since they were laid down.—
    - (i) been adequately provided for by other means; or

- (ii) ceased, as being useless or harmful to the community or for other reasons, to be in law charitable ; or
  - (iii) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regard being had to the spirit of the gift.
- (2) Subsection (1) above shall not affect the conditions which must be satisfied in order that property given for charitable purposes may be applied cy-près, except in so far as those conditions require a failure of the original purposes.
- (3) References in the foregoing subsections to the original purposes of a gift shall be construed, where the application of the property given has been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being applicable.
- (4) Without prejudice to the power to make schemes in circumstances falling within subsection (1) above, the court may by scheme made under the court's jurisdiction with respect to charities, in any case where the purposes for which the property is held are laid down by reference to any such area as is mentioned in the first column in the Third Schedule to this Act, provide for enlarging the area to any such area as is mentioned in the second column in the same entry in that Schedule.
- (5) It is hereby declared that a trust for charitable purposes places a trustee under a duty, where the case permits and requires the property or some part of it to be applied cy-près, to secure its effective use for charity by taking steps to enable it to be so applied.

#### **14 Application cy-près of gifts of donors unknown or disclaiming**

- (1) Property given for specific charitable purposes which fail shall be applicable cy-près as if given for charitable purposes generally, where it belongs—
- (a) to a donor who, after such advertisements and inquiries as are reasonable, cannot be identified or cannot be found; or
  - (b) to a donor who has executed a written disclaimer of his right to have the property returned.
- (2) For the purposes of this section property shall be conclusively presumed (without any advertisement or inquiry) to belong to donors who cannot be identified, in so far as it consists—
- (a) of the proceeds of cash collections made by means of collecting boxes or by other means not adapted for distinguishing one gift from another; or
  - (b) of the proceeds of any lottery, competition, entertainment, sale or similar money-raising activity, after allowing for property given to provide prizes or articles for sale or otherwise to enable the activity to be undertaken.
- (3) The court may by order direct that property not falling within subsection (2) above shall for the purposes of this section be treated (without any advertisement or inquiry) as belonging to donors who cannot be identified, where it appears to the court either—
- (a) that it would be unreasonable, having regard to the amounts likely to be returned to the donors, to incur expense with a view to returning the property; or
  - (b) that it would be unreasonable, having regard to the nature, circumstances and amount of the gifts, and to the lapse of time since the gifts were made, for the donors to expect the property to be returned.

- (4) Where property is applied *cy-près* by virtue of this section, the donor shall be deemed to have parted with all his interest at the time when the gift was made; but where property is so applied as belonging to donors who cannot be identified or cannot be found, and is not so applied by virtue of subsection (2) or (3) above.—
- (a) the scheme shall specify the total amount of that property; and
  - (b) the donor of any part of that amount shall be entitled, if he makes a claim not later than twelve months after the date on which the scheme is made, to recover from the charity for which the property is applied a sum equal to that part, less any expenses properly incurred by the charity trustees after that date in connection with claims relating to his gift; and
  - (c) the scheme may include directions as to the provision to be made for meeting any such claim.
- (5) For the purposes of this section, charitable purposes shall be deemed to "fail" where any difficulty in applying property to those purposes makes that property or the part not applicable *cy-près* available to be returned to the donors.
- (6) In this section, except in so far as the context otherwise requires, references to a donor include persons claiming through or under the original donor, and references to property given include the property for the time being representing the property originally given or property derived from it.
- (7) This section shall apply to property given for charitable purposes, notwithstanding that it was so given before the commencement of this Act.

## **15 Charities governed by charter, or by or under statute**

- (1) Where a Royal charter establishing or regulating a body corporate is amendable by the grant and acceptance of a further charter, a scheme relating to the body corporate or to the administration of property held by the body (including a scheme for the *cy-près* application of any such property) may be made by the court under the court's jurisdiction with respect to charities notwithstanding that the scheme cannot take effect without the alteration of the charter, but shall be so framed that the scheme, or such part of it as cannot take effect without the alteration of the charter, does not purport to come into operation unless or until Her Majesty thinks fit to amend the charter in such manner as will permit the scheme or that part of it to have effect.
- (2) Where under the court's jurisdiction with respect to charities or the corresponding jurisdiction of a court in Northern Ireland, or under powers conferred by this Act or by any enactment relating to charities of the Parliament of Northern Ireland, a scheme is made with respect to a body corporate, and it appears to Her Majesty expedient, having regard to the scheme, to amend any Royal charter relating to that body, Her Majesty may, on the application of that body, amend the charter accordingly by Order in Council in any way in which the charter could be amended by the grant and acceptance of a further charter; and any such Order in Council may be revoked or varied in like manner as the charter it amends.
- (3) The jurisdiction of the court with respect to charities shall not be excluded or restricted in the case of a charity of any description mentioned in the Fourth Schedule to this Act by the operation of the enactments or instruments there mentioned in relation to that description, and a scheme established for any such charity may modify or supersede in relation to it the provision made by any such enactment or instrument as if made

by a scheme of the court, and may also make any such provision as is authorised by that Schedule.

*Property vested in official custodian*

**16 Entrusting charity property to official custodian, and determination of trust**

(1) The court may by order vest any property held by or in trust for a charity in the official custodian for charities, or authorise 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.

(2) Where any personal property is held by or in trust for a charity, or is comprised in any testamentary gift to a charity, the property may with the agreement of the official custodian for charities be transferred to him; and his receipt for any such property comprised in a testamentary gift to a charity shall be a complete discharge of the personal representative.

In this subsection, the expression "personal property" shall extend to any real security, but shall not include any interest in land otherwise than by way of security only.

(3) Where property is vested in the official custodian for charities in trust for a charity, the court may make an order discharging him from the trusteeship as respects all or any of that property.

(4) Where the official custodian for charities 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.

(5) 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; and no vesting or transfer of any property in pursuance of this section shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

**17 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 for charities 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 four of the Public Trustee Act, 1906, except that he shall have no power to charge fees.

(2) Where any land or interest in land is vested in the official custodian for charities 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 require him to execute or do—

(a) for carrying out any transaction affecting the land or interest which is authorised by order of the court or of the Commissioners; or

- (b) for granting any lease for a term ending not more than twenty-two years after it is granted, not being a lease granted wholly or partly in consideration of a fine, or for accepting the surrender of a lease.
- (3) Where any land or interest in land is vested in the official custodian for charities in trust for a charity, the charity trustees shall have the like power to make obligations entered into by them binding on the land or interest 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 or interest being vested in him shall be enforceable by or against the charity trustees as if the land or interest were vested in them.
- (4) In relation to a corporate charity, subsections (2) and (3) above shall apply with the substitution of references to the charity for references to the charity trustees.
- (5) Subsections (2) and (3) above shall not authorise any charity trustees or charity to impose any personal liability on the official custodian for charities.
- (6) Where the official custodian for charities 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.

*Powers of Commissioners and Minister to make schemes, etc.*

## **18 Concurrent jurisdiction with High Court for certain purposes**

- (1) Subject to the provisions of this Act, the Commissioners may by order exercise the same jurisdiction and powers as are exercisable by the High Court in charity proceedings for the following purposes, that is to say:—
  - (a) establishing a scheme for the administration of a charity;
  - (b) appointing, discharging or removing a charity trustee or trustee for a charity, or removing an officer or servant;
  - (c) vesting or transferring property, or requiring or entitling any person to call for or make any transfer of property or any payment.
- (2) Where the court directs a scheme for the administration of a charity to be established, the court may by order refer the matter to the Commissioners for them to prepare or settle a scheme in accordance with such directions (if any) as the court sees fit to give, and any such order may provide for the scheme to be put into effect by order of the Commissioners as if prepared under subsection (1) above and without any further order of the court.
- (3) The Commissioners shall not have jurisdiction under this section to try or determine the title at law or in equity to any property as between a charity or trustee for a charity and a person holding or claiming the property or an interest in it adversely to the charity, or to try or determine any question as to the existence or extent of any charge or trust.
- (4) Subject to the following subsections, the Commissioners shall not exercise their jurisdiction under this section as respects any charity, except—
  - (a) on the application of the charity ; or
  - (b) on an order of the court under subsection (2) above.

---

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

---

- (5) In the case of a charity not having any income from property amounting to more than fifty pounds a year, and not being an exempt charity, the Commissioners may exercise their jurisdiction under this section on the application—
- (a) of the Attorney General; or
  - (b) of any one or more of the charity trustees, or of any person interested in the charity, or of any two or more inhabitants of the area of the charity, if it is a local charity.

- (6) Where in the case of a charity, other than an exempt charity, the Commissioners are satisfied that the charity trustees ought in the interests of the charity to apply for a scheme, but have unreasonably refused or neglected to do so, the Commissioners may apply to the Secretary of State for him to refer the case to them with a view to a scheme, and if, after giving the charity trustees an opportunity to make representations to him, the Secretary of State does so, the Commissioners may proceed accordingly without the application required by subsection (4) or (5) above:

Provided that the Commissioners shall not have power in a case where they act by virtue of this subsection to alter the purposes of a charity, unless forty years have elapsed from the date of its foundation.

- (7) The Commissioners may on the application of any charity trustee or trustee for a charity exercise their jurisdiction under this section for the purpose of discharging him from his trusteeship.
- (8) Before exercising any jurisdiction under this section otherwise than on an order of the court, 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 or who is party or privy to an application for the exercise of the jurisdiction; 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.
- (9) The Commissioners shall not exercise their jurisdiction under this section in any case (not referred to them by order of the court) which, by reason of its contentious character, or of any special question of law or of fact which it may involve, or for other reasons, the Commissioners may consider more fit to be adjudicated on by the court.
- (10) An appeal against any order of the Commissioners under this section may be brought in the High Court by the Attorney General.
- (11) An appeal against any order of the Commissioners under this section may also, at any time within the three months beginning with the day following that on which the order is published, be brought in the High Court by the charity or any of the charity trustees, or by any person removed from any office or employment by the order (unless he is removed with the concurrence of the charity trustees or with the approval of the special visitor, if any, of the charity):

Provided that no appeal shall be brought under this subsection except with a certificate of the Commissioners that it is a proper case for an appeal or with the leave of one of the judges of the High Court attached to the Chancery Division.

- (12) Where an order of the Commissioners under this section establishes a scheme for the administration of a charity, any person interested in the charity shall have the like right of appeal under subsection (11) above as a charity trustee, and so also, in the case of a charity which is a local charity in any area, shall any two or more inhabitants of the area and the parish council of any rural parish comprising the area or any part of it;

but a parish council shall not exercise their right of appeal without the consent of the parish meeting.

- (13) In the application of this section to the Minister of Education, subsection (6) shall have effect so as to authorise him to proceed with a view to a scheme in the circumstances in which it authorises the Commissioners to apply to the Secretary of State for him to refer a case to them.

## **19 Further powers to make schemes or alter application of charitable property**

- (1) Where it appears to the Commissioners that a scheme should be established for the administration of a charity, but also that it is necessary or desirable for the scheme to alter the provision made by an Act of Parliament establishing or regulating the charity or to make any other provision which goes or might go beyond the powers exercisable by them apart from this section, or that it is for any reason proper for the scheme to be subject to parliamentary review, then (subject to subsection (6) below) the Commissioners - may settle a scheme accordingly with a view to its being given effect under this section.
- (2) A scheme settled by the Commissioners under this section may be given effect by order of the Secretary of State made by statutory instrument, and a draft of the statutory instrument shall be laid before Parliament.
- (3) Without prejudice to the operation of section six of the Statutory Instruments Act, 1946, in other cases, in the case of a scheme which goes beyond the powers exercisable apart from this section in altering a statutory provision contained in or having effect under any public general Act of Parliament, the order shall not be made unless the draft has been approved by resolution of each House of Parliament.
- (4) Subject to subsection (5) below, any provision of a scheme brought into effect under this section may be modified or superseded by the court or the Commissioners as if it were a scheme brought into effect by order of the Commissioners under section eighteen of this Act.
- (5) Where subsection (3) above applies to a scheme, the order giving effect to it may direct that the scheme shall not be modified or superseded by a scheme brought into effect otherwise than under this section, and may also direct that that subsection shall apply to any scheme modifying or superseding the scheme to which the order gives effect.
- (6) The Commissioners shall not proceed under this section without the like application or the like reference from the Secretary of State, and the like notice to the charity trustees, as would be required if they were proceeding (without an order of the court) under section eighteen of this Act; but on any application or reference made with a view to a scheme, the Commissioners may proceed under this section or that as appears to them appropriate.
- (7) Notwithstanding anything in the trusts of a charity, no expenditure incurred in preparing or promoting a Bill in Parliament shall without the consent of the court or the Commissioners be defrayed out of any moneys applicable for the purposes of a charity:
- Provided that this subsection shall not apply in the case of an exempt charity.
- (8) Where the Commissioners are satisfied—

- (a) that the whole of the income of a charity cannot in existing circumstances be effectively applied for the purposes of the charity; and
- (b) that, if those circumstances continue, a scheme might be made for applying the surplus cy-près; and
- (c) that it is for any reason not yet desirable to make such a scheme;

then the Commissioners may by order authorise the charity trustees at their discretion (but subject to any conditions imposed by the order) to apply any accrued or accruing income for any purposes for which it might be made applicable by such a scheme, and any application authorised by the order shall be deemed to be within the purposes of the charity:

Provided that the order shall not extend to more than three hundred pounds out of income accrued before the date of the order, nor to income accruing more than three years after that date, nor to more than one hundred pounds out of the income accruing in any of those three years.

- (9) In the application of this section to the Minister of Education, a reference to that Minister shall be substituted for the reference in subsection (2) to the Secretary of State.

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

- (1) Where the Commissioners are satisfied as the result of an inquiry instituted by them under section six of this Act—
  - (a) that there has been in the administration of a charity any misconduct or mismanagement; 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;

then for that purpose the Commissioners may of their own motion do all or any of the following things:—

- (i) they may by order remove any trustee, charity trustee, officer, agent or servant 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) they may make any such order as is authorised by subsection (1) of section sixteen of this Act with respect to the vesting in or transfer to the official custodian for charities of property held by or in trust for the charity;
  - (iii) they may order any bank or other person who holds money or securities on behalf of the charity or of any trustee for it not to part with the money or securities without the approval of the Commissioners;
  - (iv) they may, notwithstanding anything in the trusts of the charity, by order restrict 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.
- (2) The references in subsection (1) 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.



- (3) The Commissioners may also remove a charity trustee by order made of their own motion—
- (a) where the trustee has been convicted of felony, or is a bankrupt or a corporation in liquidation, or is incapable of acting by reason of mental disorder within the meaning of the Mental Health Act, 1959;
  - (b) where the trustee has not acted, and will not declare his willingness or unwillingness to act;
  - (c) 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.
- (4) 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.
- (5) 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 eighteen of this Act.
- (6) 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 eighteen of this Act.
- (7) Subsections (10) and (11) of section eighteen of this Act shall apply to orders under this section as they apply to orders under that, save that where the Commissioners have by order removed a trustee, charity trustee, officer, agent, or servant of a charity under the power conferred by subsection (1) of this section, an appeal against such an order may be brought by any person so removed without a certificate of the Commissioners and without the leave of one of the judges of the High Court attached to the Chancery Division.
- (8) The power of the Commissioners under subsection (1) above to remove a trustee, charity trustee, officer, agent or servant of a charity shall include power to suspend him from the exercise of his office or employment pending the consideration of his removal (but not for a period longer than three months), and to make provision as respects the period of the 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.

- (9) Before exercising any jurisdiction under this section, 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.
- (10) If any person contravenes an order under paragraph (iii) of subsection (1) above, he shall be liable on summary conviction to a fine not exceeding one hundred pounds, or to imprisonment for a term not exceeding six months, or to both; but no proceedings for an offence punishable under this subsection shall be instituted except by or with the consent of the Commissioners.
- (11) Notwithstanding subsection (8) of section three of this Act, paragraph (ii) of subsection (1) above shall apply to the Minister of Education as well as to the Commissioners.
- (12) This section shall not apply to an exempt charity.

## **21 Publicity for proceedings under ss. 18 to 20**

- (1) The Commissioners shall not make any order under this Act to establish a scheme for the administration of a charity, or submit such a scheme to the court or the Secretary of State for an order giving it effect, unless not less than one month previously there has been given public notice of their proposals, inviting representations to be made to them within a time specified in the notice, being not less than one month from the date of such notice, and, in the case of a scheme relating to a local charity in a rural parish (other than an ecclesiastical charity), a draft of the scheme has been communicated to the parish council or, in the case of a parish not having a parish council, to the chairman of the parish meeting.
- (2) The Commissioners shall not make any order under this Act to appoint, discharge or remove a charity trustee or trustee for a charity (other than the official custodian for charities), unless not less than one month previously there has been given the like public notice as is required by subsection (1) above for an order establishing a scheme:  
  
Provided that this subsection shall not apply in the case of an order discharging or removing a trustee if the Commissioners are of opinion that it is unnecessary and not in his interest to give publicity to the proposal to discharge or remove him.
- (3) Before the Commissioners make an order under this Act to remove without his consent a charity trustee or trustee for a charity, or an officer, agent or servant of a charity, the Commissioners shall, unless he cannot be found or has no known address in the United Kingdom, give him not less than one month's notice of their proposal, inviting representations to be made to them within a time specified in the notice.
- (4) Where notice is given of any proposals as required by subsections (1) to (3) above, the Commissioners shall take into consideration any representations made to them about the proposals within the time specified in the notice, and may (without further notice) proceed with the proposals either with-, out modification or with such modifications as appear to them to be desirable.
- (5) Where the Commissioners make an order which is subject to appeal under subsection (11) of section eighteen of this Act, the order shall be published either by giving public notice of it or by giving notice of it to all persons entitled to appeal against it under that subsection, as the Commissioners think fit.

- (6) Where the Commissioners make an order under this Act to establish a scheme for the administration of a charity, a copy of the order shall, for not less than one month after the order is published, be available for public inspection at all reasonable times at the Commissioners' office and also at some convenient place in the area of the charity, if it is a local charity.
- (7) Any notice to be given under this section of any proposals or order shall give such particulars of the proposals or order, or such directions for obtaining information about them, as the Commissioners think sufficient and appropriate, and any public notice shall be given in such manner as they think sufficient and appropriate.
- (8) Any notice to be given under this section, other than a public 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.

#### *Establishment of common investment funds*

## **22 Schemes to establish common investment funds**

- (1) The court or the Commissioners may by order make and bring into effect schemes (in this section referred to as "common investment schemes") for the establishment of common investment funds under trusts which provide—
  - (a) for property transferred to the fund by or on behalf of a charity participating in the scheme to be invested under the control of trustees appointed to manage the fund; and
  - (b) for the participating charities to be entitled (subject to the provisions of the scheme) to the capital and income of the fund in shares determined by reference to the amount or value of the property transferred to it by or on behalf of each of them and to the value of the fund at the time of the transfers.
- (2) The court or the Commissioners may make a common investment scheme on the application of any two or more charities.
- (3) A common investment scheme may be made in terms admitting any charity to participate, or the scheme may restrict the right to participate in any manner.
- (4) A common investment scheme may make provision for, and for all matters connected with, the establishment, investment, management and winding up of the common investment fund, and may in particular include provision—
  - (a) for remunerating persons appointed trustees to hold or manage the fund or any part of it, with or without provision authorising a person to receive the remuneration notwithstanding that he is also a charity trustee or trustee for a participating charity;
  - (b) for restricting the size of the fund, and for regulating as to time, amount or otherwise the right to transfer property to or withdraw it from the fund, and for enabling sums to be advanced out of the fund by way of loan to a participating charity pending the withdrawal of property from the fund by the charity;
  - (c) for enabling income to be withheld from distribution with a view to avoiding fluctuations in the amounts distributed, and generally for regulating distributions of income;
  - (d) for enabling moneys to be borrowed temporarily for the purpose of meeting payments to be made out of the fund;

---

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

---

- (e) for enabling questions arising under the scheme as to the right of a charity to participate, or as to the rights of participating charities, or as to any other matter, to be conclusively determined by the decision of the trustees managing the fund or in any other manner;
  - (f) for regulating the accounts and information to be supplied to participating charities.
- (5) A common investment scheme, in addition to the provision for property to be transferred to the fund on the basis that the charity shall be entitled to a share in the capital and income of the fund, may include provision for enabling sums to be deposited by or on behalf of a charity on the basis that (subject to the provisions of the scheme) the charity shall be entitled to repayment of the sums deposited and to interest thereon at a rate determined by or under the scheme; and where a scheme makes any such provision it shall also provide for excluding from the amount of capital and income to be shared between charities participating otherwise than by way of deposit such amounts (not exceeding the amounts properly attributable to the making of deposits) as are from time to time reasonably required in respect of the liabilities of the fund for the repayment of deposits and for the interest on deposits, including amounts required by way of reserve.
- (6) A common investment scheme may provide for the assets of the common investment fund or any of them to be vested in the official custodian for charities, and, if made by the Commissioners or if they consent, may also appoint him or authorise him to be appointed trustee to manage the fund or any part of it, and as managing trustee he shall, subject to section three of this Act, have the same powers, duties and liabilities as other managing trustees; but where a common investment scheme provides for the official custodian for charities to exercise any discretion with respect to the investment of the fund it shall make provision for him to be advised by a committee of persons who have special experience of investment and finance or of the administration of trusts, or who represent or are nominated by bodies having that experience.
- (7) Except in so far as a common investment scheme provides to the contrary, the rights under it of a participating charity shall not be capable of being assigned or charged, nor shall any trustee or other person concerned in the management of the common investment fund be required or entitled to take account of any trust or other equity affecting a participating charity or its property or rights.
- (8) The powers of investment of every charity shall include power to participate in common investment schemes, unless the power is excluded by a provision specifically referring to common investment schemes in the trusts of the charity.
- (9) A common investment fund shall be deemed for all purposes to be a charity, and the assets of the fund shall be treated for the purposes of this Act as a permanent endowment, except that if the scheme establishing the fund admits to participation only charities not having a permanent endowment, the fund shall be treated as a charity not having a permanent endowment; and if the scheme admits only exempt charities, the fund shall be an exempt charity for the purposes of this Act.
- (10) The persons managing a common investment fund shall not be treated for the purposes of the Prevention of Fraud (Investments) Act, 1958, as carrying on the business of dealing in securities within the meaning of that Act, nor shall subsection (1) of section fourteen of that Act (which restricts the distribution of circulars relating to investments) prohibit the distribution or possession of any document by reason only that it contains an invitation or information relating to a common investment fund.

- (11) Subsections (9) and (10) above shall apply not only to common investment funds established under the powers of this section, but also to any similar fund established for the exclusive benefit of charities by or under any enactment relating to any particular charities or class of charity.
- (12) Notwithstanding subsection (8) of section three of this Act, subsection (6) above shall apply to schemes made by the Minister of Education as it applies to those made by the court.

*Miscellaneous powers of Commissioners and Minister*

**23 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:
- Provided that 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 confer any authority in relation to a disused church as defined in that subsection, 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; and in that subsection "disused church" means 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, or the Reorganisation Areas Measures, 1944 and 1954, and extends to any land which under such a scheme is to be used or disposed of with a disused church, and for this purpose " building " includes part of a building.

#### **24 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.

#### **25 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 may make provision for such documents deposited with the Commissioners under this section as may be prescribed to be destroyed or otherwise disposed of after such period or in such circumstances as may be prescribed.
- (5) Subsections (3) and (4) above shall apply to any document transmitted to the Commissioners under section seven of this Act 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.

#### **26 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 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 of the lapse of time since payment of the bill.

## **27 Powers for recovery or redemption of charity rentcharges**

- (1) Where it appears to the Commissioners that a charity is entitled to receive a rentcharge issuing out of any land, or out of the rents, profits or other income of any land, they may take legal proceedings on behalf of the charity for recovering the rentcharge or compelling payment.
- (2) Where a charity is entitled to receive a rentcharge issuing out of any land, the Commissioners may give to the estate owner in respect of the fee simple in the land (or, if the rentcharge is payable in respect of an estate for a term of years, then to the estate owner in respect of that estate) a notice to treat with the charity trustees for the redemption of the rent-charge.
- (3) Where a notice to treat is given under subsection (2) above in respect of any land, and the rentcharge is still subsisting at the expiration of ten years from the date on which the notice is given, then (subject to the provisions of this section) the person who is then the estate owner in respect of the relevant estate in the land shall be liable to pay the redemption price to the charity or to the person entitled to receive it as trustee for the charity, and on payment or tender of the redemption price shall be entitled to a proper and effective release of the rentcharge (or, if he has so requested, a proper and effective transfer of it to a person nominated by him).
- (4) For the purposes of subsection (3) above the redemption price for a rentcharge shall be such as may be determined in accordance with regulations made by the Treasury.
- (5) Proceedings for the recovery of sums due under subsection (3) above may be taken by the Commissioners on behalf of the charity.
- (6) Where an estate owner of land liable to a rentcharge has by law or by contract any right of indemnity or contribution in respect of the rentcharge against any person or property, then on his redeeming the rentcharge in accordance with subsection (3) above he shall have the like right of indemnity or contribution in respect of the redemption price.
- (7) For the purposes of the Land Charges Act, 1925, and of the Land Registration Act, 1925, a notice to treat under this section shall be treated as a land charge affecting the estate of the estate owner to whom it is given, and those Acts shall apply to the notice to treat as they apply to an estate contract.
- (8) Where an estate owner of land liable to a rentcharge pays it through an agent, a notice to treat under this section, if given to the agent on behalf of the estate owner, shall for the purposes of this section be deemed to be given to the estate owner, notwithstanding

that the agent's authority from the estate owner does not extend to accepting the notice on his behalf.

- (9) This section shall apply to any periodical payment other than rent incident to a reversion as it applies to a rentcharge.

### *Miscellaneous*

## **28 Taking of legal proceedings**

- (1) Charity proceedings may be taken with reference to a charity either by the charity, or by any of the charity trustees, or by any person interested in the charity, or by any two or more inhabitants of the area of the charity, if it is a local charity, but not by any other person.
- (2) Subject to the following provisions of this section, no charity proceedings relating to a charity (other than an exempt charity) shall be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of the Commissioners.
- (3) The Commissioners shall not, without special reasons, authorise the taking of charity proceedings where in their opinion the case can be dealt with by them under the powers of this Act.
- (4) This section shall not require any order for the taking of proceedings in a pending cause or matter or for the bringing of any appeal.
- (5) Where the foregoing provisions of this section require the taking of charity proceedings to be authorised by an order of the Commissioners, 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 the foregoing subsections shall apply to the taking of proceedings by the Attorney General, with or without a relator.
- (7) Where it appears to the Commissioners, on an application for an order under this section or otherwise, that it is desirable for legal proceedings to be taken with reference to any charity (other than an exempt charity) or its property or affairs, and for the proceedings to be taken by the Attorney General, the Commissioners shall so inform the Attorney General, and send him such statements and particulars as they think necessary to explain the matter.
- (8) In this section " charity proceedings " means proceedings in any court in England or Wales brought under the court's jurisdiction with respect to charities, or brought under the court's jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes.
- (9) The Charities Procedure Act, 1812, and so much of any local or private Act establishing or regulating a charity as relates to the persons by whom or the manner or form in which any charity proceedings may be brought shall cease to have effect.

## **29 Restrictions on dealing with charity property**

- (1) Subject to the exceptions provided for by this section, no property forming part of the permanent endowment of a charity shall, without an order of the court or of the



Commissioners, be mortgaged or charged by way of security for the repayment of money borrowed, nor, in the case of land in England or Wales, be sold, leased or otherwise disposed of.

- (2) Subsection (1) above shall apply to any land which is held by or in trust for a charity and is or has at any time been occupied for the purposes of the charity, as it applies to land forming part of the permanent endowment of a charity; but a transaction for which the sanction of an order under subsection (1) above is required by virtue only of this subsection shall, notwithstanding that it is entered into without such an order, be valid in favour of a person who (then or afterwards) in good faith acquires an interest in or charge on the land for money or money's worth.
- (3) This section shall apply notwithstanding anything in the trusts of a charity, but shall not require the sanction of an order—
  - (a) for any transaction for which general or special authority is expressly given (without the authority being made subject to the sanction of an order) by any statutory provision contained in or having effect under an Act of Parliament or by any scheme legally established; or
  - (b) for the granting of a lease for a term ending not more than twenty-two years after it is granted, not being a lease granted wholly or partly in consideration of a fine; or
  - (c) for any disposition of an advowson.
- (4) This section shall not apply to an exempt charity, nor to any charity which is excepted by order or regulations.

### **30 Charitable companies**

- (1) Where a charity may be wound up by the High Court under the Companies Act, 1948, a petition for it to be wound up under that 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.
- (2) Where a charity is a company or other body corporate, and has power to alter the instruments establishing or regulating it as a body corporate, no exercise of that power which has the effect of the body ceasing to be a charity shall be valid so as to affect the application of any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money's worth, or of any property representing property so acquired, or of any property representing income which has accrued before the alteration is made, or of the income from any such property as aforesaid.

### **31 Protection of expression " common good "**

- (1) It shall not be lawful, without the consent of the Commissioners, to invite gifts in money or in kind to the funds of, or to any fund managed by, an institution which has the words " common good " in its name, other than a body corporate established by Royal charter, or to any fund described in or in connection with the invitation by a name which includes the words " common good " otherwise than as part of the name of such a body corporate.
- (2) The words " common good " shall not, without the consent of the Commissioners, be used in the name of any institution established in England or Wales, other than a body corporate established by Royal charter.

---

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

---

- (3) Any person contravening subsection (1) or (2) of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding fifty pounds.