



Charities Act 2011

2011 CHAPTER 25

PART 6

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

Powers of Commission to act for protection of charities etc.

76 Suspension of trustees etc. and appointment of interim managers

- (1) Subsection (3) applies where, at any time after it has instituted an inquiry under section 46 with respect to any charity, the Commission is 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—
 - (i) protecting the property of the charity, or
 - (ii) securing a proper application for the purposes of the charity of that property or of property coming to the charity.
- (2) The reference in subsection (1) to misconduct or mismanagement extends (regardless of anything in the trusts of the charity) to the employment—
- (a) for the remuneration or reward of persons acting in the affairs of the charity, or
 - (b) 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 Commission may of its own motion do one or more of the following—
- (a) by order suspend any person who is a trustee, charity trustee, officer, agent or employee of the charity from office or employment pending consideration being given to the person's removal (whether under section 79 or 80 or otherwise);
 - (b) by order appoint such number of additional charity trustees as it considers necessary for the proper administration of the charity;

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- (c) by order—
 - (i) vest any property held by or in trust for the charity in the official custodian,
 - (ii) require the persons in whom any such property is vested to transfer it to the official custodian, or
 - (iii) appoint any person to transfer any such property to the official custodian;
 - (d) 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 Commission;
 - (e) order any debtor of the charity not to make any payment in or towards the discharge of the debtor's liability to the charity without the approval of the Commission;
 - (f) by order restrict (regardless of 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 Commission;
 - (g) by order appoint (in accordance with section 78) an interim manager, to act as receiver and manager in respect of the property and affairs of the charity.
- (4) The Commission may not make an order under subsection (3)(a) so as to suspend a person from office or employment for a period of more than 12 months.
- (5) But any order under subsection (3)(a) made in the case of any person (“P”) may make provision, as respects the period of P's suspension for matters arising out of it, and in particular—
- (a) for enabling any person to execute any instrument in P's name or otherwise act for P, and
 - (b) 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.

This does not affect the generality of section 337(1) and (2).

- (6) The Commission—
- (a) must, at such intervals as it thinks fit, review any order made by it under paragraph (a), or any of paragraphs (c) to (g), of subsection (3), and
 - (b) if on any such review it appears to the Commission that it would be appropriate to discharge the order in whole or in part, must so discharge it (whether subject to any savings or other transitional provisions or not).

77 Offence of contravening certain orders under s.76

- (1) It is an offence for a person to contravene an order under—
- (a) section 76(3)(d) (order prohibiting person from parting with property),
 - (b) section 76(3)(e) (order prohibiting debtor of charity from discharging liability), or
 - (c) section 76(3)(f) (order restricting transactions or payments).
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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- (3) This section is not to be treated as precluding 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 section 76(3)(d) or (f) (whether or not proceedings in respect of the contravention are brought against the trustee under this section).

78 Interim managers: supplementary

- (1) The Commission may under section 76(3)(g) appoint to be interim manager in respect of a charity such person (other than a member of its staff) as it thinks fit.
- (2) An order made by the Commission under section 76(3)(g) may make provision with respect to the functions to be discharged by the interim manager appointed by the order.
- This does not affect the generality of section 337(1) and (2).
- (3) Those functions are to be discharged by the interim manager under the supervision of the Commission.
- (4) In connection with the discharge of those functions, an order under section 76(3)(g) may provide—
- (a) for the interim manager appointed by the order to have such powers and duties of the charity trustees of the charity concerned (whether arising under this Act or otherwise) as are specified in the order;
 - (b) for any powers or duties specified by virtue of paragraph (a) to be exercisable or performed by the interim manager to the exclusion of those trustees.
- (5) Where a person has been appointed interim manager by any such order—
- (a) section 110 (power to give advice and guidance) applies to the interim manager and the interim manager's functions as it applies to a charity trustee of the charity concerned and to the charity trustee's duties as such, and
 - (b) the Commission may apply to the High Court for directions in relation to any particular matter arising in connection with the discharge of those functions.
- (6) The High Court may on an application under subsection (5)(b)—
- (a) give such directions, or
 - (b) make such orders declaring the rights of any persons (whether before the court or not),
- as it thinks just.
- (7) The costs of an application under subsection (5)(b) must be paid by the charity concerned.
- (8) Regulations made by the Minister may make provision with respect to—
- (a) the appointment and removal of persons appointed in accordance with this section;
 - (b) the remuneration of such persons out of the income of the charities concerned;
 - (c) the making of reports to the Commission by such persons.
- (9) Regulations under subsection (8) may, in particular, authorise the Commission—
- (a) to require security for the due discharge of the functions of a person so appointed to be given by that person;
 - (b) to determine the amount of such a person's remuneration;

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- (c) to disallow any amount of remuneration in such circumstances as are prescribed by the regulations.

79 Removal of trustee or officer etc. for protective etc. purposes

- (1) Subsection (2) applies where, at any time after it has instituted an inquiry under section 46 with respect to any charity, the Commission is satisfied both as mentioned in section 76(1)(a) (misconduct or mismanagement etc.) and as mentioned in section 76(1)(b) (need to protect property etc.).
- (2) The Commission may of its own motion do either or both of the following—
 - (a) by order remove any trustee, charity trustee, officer, agent or employee of the charity—
 - (i) who has been responsible for or privy to the misconduct or mismanagement, or
 - (ii) whose conduct contributed to it or facilitated it;
 - (b) by order establish a scheme for the administration of the charity.

80 Other powers to remove or appoint charity trustees

- (1) The Commission may remove a charity trustee by order made of its own motion if—
 - (a) within the last 5 years, the trustee—
 - (i) having previously been adjudged bankrupt, has been discharged, or
 - (ii) having previously made a composition or arrangement with, or granted a trust deed for, creditors, has been discharged in respect of it ^{F1}; or
 - (iii) having previously been the subject of a debt relief order, has been discharged from all the qualifying debts under the debt relief order;]
 - (b) the trustee is a corporation in liquidation;
 - (c) the trustee is incapable of acting because of mental disorder within the meaning of the Mental Health Act 1983;
 - (d) the trustee has not acted, and will not make a declaration of willingness or unwillingness to act;
 - (e) the trustee—
 - (i) is outside England and Wales or cannot be found, or
 - (ii) does not act,
 and the trustee's absence or failure to act impedes the proper administration of the charity.
- (2) The Commission may by order made of its own motion appoint a person to be a charity trustee—
 - (a) in place of a charity trustee removed by the Commission under section 79 or subsection (1) or otherwise;
 - (b) if there are no charity trustees, or if because of vacancies in their number or the absence or incapacity of any of their number the charity cannot apply for the appointment;
 - (c) if there is a single charity trustee who is not a corporation aggregate and the Commission is of opinion that it is necessary to increase the number for the proper administration of the charity;

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- (d) if the Commission is 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—
- (i) is outside England and Wales or cannot be found, or
 - (ii) does not act.
- (3) In subsection (1)(a)(i), the reference to the trustee having been adjudged bankrupt includes a reference to the trustee's estate having been sequestrated.
- (4) This section does not apply in relation to an exempt charity except at a time after the Commission has instituted an inquiry under section 46 with respect to it.

Textual Amendments

- F1** S. 80(1)(a)(iii) and preceding word inserted (1.10.2012) by [The Tribunals, Courts and Enforcement Act 2007 \(Consequential Amendments\) Order 2012 \(S.I. 2012/2404\)](#), art. 1, [Sch. 2 para. 62\(2\)](#) (with art. 5)

81 Removal or appointment of charity trustees etc.: supplementary

- (1) The powers of the Commission under sections 76, 79 and 80 to remove or appoint charity trustees of its own motion include power to make any such order with respect to the vesting in or transfer to the charity trustees of any property as the Commission could make on the removal or appointment of a charity trustee by it under section 69 (Commission's concurrent jurisdiction with High Court for certain purposes).
- (2) Any order under any of those sections or this section—
- (a) for the removal or appointment of a charity trustee or trustee for a charity, or
 - (b) for the vesting or transfer of any property,
- has the same effect as an order made under section 69.
- (3) Subsection (1) does not apply in relation to an exempt charity except at a time after the Commission has instituted an inquiry under section 46 with respect to it.

82 Removal of trustees etc.: notice

- (1) Before exercising any jurisdiction by virtue of section 79 or 80, the Commission must give notice of its 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.
- (2) Any such notice—
- (a) may be given by post, and
 - (b) if given by post, may be addressed to the recipient's last known address in the United Kingdom.

83 Power to suspend or remove trustees etc. from membership of charity

- (1) Subsection (2) applies where—
- (a) the Commission makes an order under section 76(3) suspending from office or employment a person who is a trustee, charity trustee, officer, agent or employee of a charity, and

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- (b) the person is a member of the charity.
- (2) The Commission may also make an order suspending the person's membership of the charity for the period for which the person is suspended from office or employment.
- (3) Subsection (4) applies where—
 - (a) the Commission makes an order under section 79(2) removing from office or employment a person who is an officer, agent or employee of a charity, and
 - (b) the person is a member of the charity.
- (4) The Commission may also make an order—
 - (a) terminating the person's membership of the charity, and
 - (b) prohibiting the person from resuming membership of the charity without the Commission's consent.
- (5) If an application for the Commission's consent under subsection (4)(b) is made 5 years or more after the order was made, the Commission must grant the application unless satisfied that, because of any special circumstances, it should be refused.

84 Power to direct specified action to be taken

- (1) This section applies where, at any time after the Commission has instituted an inquiry under section 46 with respect to any 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.).
- (2) The Commission may by order direct—
 - (a) the charity trustees,
 - (b) any trustee for the charity,
 - (c) any officer or employee of the charity, or
 - (d) (if a body corporate) the charity itself,
 to take any action specified in the order which the Commission considers to be expedient in the interests of the charity.
- (3) An order under this section—
 - (a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned, or by the charity, in relation to the administration of the charity or to its property, but
 - (b) may not require any action to be taken which is prohibited by any Act or expressly prohibited by the trusts of the charity or is inconsistent with its purposes.
- (4) Anything done by a person or body under the authority of an order under this section is to be treated as properly done in the exercise of the powers mentioned in subsection (3) (a).
- (5) Subsection (4) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order.

85 Power to direct application of charity property

- (1) This section applies where the Commission is satisfied—

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- (a) that a person or persons in possession or control of any property held by or on trust for a charity is or are unwilling to apply it properly for the purposes of the charity, and
 - (b) that it is necessary or desirable to make an order under this section for the purpose of securing a proper application of that property for the purposes of the charity.
- (2) The Commission may by order direct the person or persons concerned to apply the property in such manner as is specified in the order.
- (3) An order under this section—
 - (a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned in relation to the property, but
 - (b) may not require any action to be taken which is prohibited by any Act or expressly prohibited by the trusts of the charity.
- (4) Anything done by a person under the authority of an order under this section is to be treated as properly done in the exercise of the powers mentioned in subsection (3)(a).
- (5) Subsection (4) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order.

86 Copy of certain orders, and reasons, to be sent to charity

- (1) Where the Commission makes an order under a provision mentioned in subsection (2) it must send the documents mentioned in subsection (3)—
 - (a) to the charity concerned (if a body corporate), or
 - (b) (if not) to each of the charity trustees.
- (2) The provisions are—
 - section 76 (suspension of trustees etc. and appointment of interim managers);
 - section 79 (removal of trustee or officer etc. for protective etc. purposes);
 - section 80 (other powers to remove or appoint charity trustees);
 - section 81 (removal or appointment of charity trustees etc.: supplementary);
 - section 83 (power to suspend or remove trustees etc. from membership of charity);
 - section 84 (power to direct specified action to be taken);
 - section 85 (power to direct application of charity property).
- (3) The documents are—
 - (a) a copy of the order, and
 - (b) a statement of the Commission's reasons for making it.
- (4) The documents must be sent to the charity or charity trustees as soon as practicable after the making of the order.
- (5) The Commission need not comply with subsection (4) in relation to the documents, or (as the case may be) the statement of its reasons, if it considers that to do so—
 - (a) would prejudice any inquiry or investigation, or
 - (b) would not be in the interests of the charity;

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but, once the Commission considers that this is no longer the case, it must send the documents, or (as the case may be) the statement, to the charity or charity trustees as soon as practicable.

- (6) Nothing in this section requires any document to be sent to a person who—
 - (a) cannot be found, or
 - (b) has no known address in the United Kingdom.
- (7) Any documents required to be sent to a person under this section may be sent to, or otherwise served on, the person in the same way as an order made by the Commission under this Act could be served on the person in accordance with section 339.

87 Supervision by Commission of certain Scottish charities

- (1) Sections 76 to 82 (except section 79(2)(b)) and sections 84 to 86 have effect in relation to any body which—
 - (a) is entered in the Scottish Charity Register, and
 - (b) is managed or controlled wholly or mainly in or from England or Wales, as they have effect in relation to a charity.
- (2) Subsection (3) applies where—
 - (a) a body entered in the Scottish Charity Register is managed or controlled wholly or mainly in or from Scotland, but
 - (b) any person in England and Wales holds any property on behalf of the body or of any person concerned in its management or control.
- (3) If the Commission is satisfied, on the basis of such information as may be supplied to it by the Scottish Charity Regulator, as to the matters mentioned in subsection (4), it may make an order requiring the person holding the property not to part with it without the Commission's approval.
- (4) The matters are—
 - (a) that there has been any misconduct or mismanagement in the administration of the body, and
 - (b) that it is necessary or desirable to make an order under subsection (3) for the purpose of protecting the property of the body or securing a proper application of such property for the purposes of the body.
- (5) Subsection (6) applies where—
 - (a) any person in England and Wales holds any property on behalf of a body entered in the Scottish Charity Register or of any person concerned in the management or control of such a body, and
 - (b) the Commission is satisfied (whether on the basis of such information as may be supplied to it by the Scottish Charity Regulator or otherwise)—
 - (i) that there has been any misconduct or mismanagement in the administration of the body, and
 - (ii) that it is necessary or desirable to make an order under subsection (6) for the purpose of protecting the property of the body or securing a proper application of such property for the purposes of the body.
- (6) The Commission may by order—

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- (a) vest the property in such body or charity as is specified in the order in accordance with subsections (7) and (8),
 - (b) require any persons in whom the property is vested to transfer it to any such body or charity, or
 - (c) appoint any person to transfer the property to any such body or charity.
- (7) The Commission may specify in an order under subsection (6)—
- (a) such other body entered in the Scottish Charity Register, or
 - (b) such charity,
- as it considers appropriate, if the purposes of the body or charity are, in the opinion of the Commission, as similar in character to those of the body referred to in subsection (5)(a) as is reasonably practicable.
- (8) But the Commission must not so specify any body or charity unless it has received from—
- (a) the persons concerned in the management or control of the body, or
 - (b) (as the case may be) the charity trustees of the charity,
- written confirmation that they are willing to accept the property.

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