

CHARITIES ACT 1962
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Received Royal Assent: 25 January 1962

Passed: 13 February 1962

AN ACT

to extend the powers of the High Court relating to the Charities, to make further provisions as to powers exercisable by or with respect to charities or with respect to gifts to charity and for purposes connected therewith.

PART I

1 Specific powers of the Court

Upon application of the charity trustees, or the Attorney General with notice to the Charity Trustees, the Court upon being satisfied that the circumstances of the case render it desirable or beneficial to the charity, may, subject to such terms or conditions as the Court may prescribe, by order authorise or direct the charity trustees to:

- (a) sell, call in or convert into money, any endowment or any part thereof;
 - (b) partition or exchange any land of any endowment or any part thereof, for other land, including a partition or exchange in consideration of money paid for equality of exchange;
 - (c) lease any land of any endowment or any part thereof or any easement, right or privilege of any kind, over or in relation to the same for any purpose whatever,
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- for any term not exceeding twenty-one years;
- (d) amalgamate the trusts of any charity or endowment with the trusts of any other charity or endowment;
 - (e) extend the benefits of a charity which are restricted to any local Government district or ecclesiastical parish to any area or any adjacent districts or parishes;
 - (f) raise any sum of money by mortgage or charge on all or any part of the endowment;
 - (g) cancel or release any encumbrance forming part of any endowment;
 - (h) establish a scheme for the better administration of the charity;
 - (i) apply the capital monies of any endowment or any part thereof or the proceeds of sale and conversion of any endowment or any part thereof wholly in one or partly in one and partly in another or others of the following modes:-
 - (i) in the discharge or redemption of any encumbrance to which the endowment is subject,
 - (ii) in the purchase of land in customary fee simple, whether subject to an encumbrance or not, or in payment for equality of partition or exchange,
 - (iii) in making new roads, streets, drains, sewers, erecting buildings, repairing, altering, re-building or removing existing buildings or making any other improvements or alterations in the state or condition of the charity lands or for any other purposes beneficial to the charity lands,
 - (iv) under the general power of investment in section 3 of the Trustee Act 2001;
 - (v) **[Subpara (iv) substituted by Trustee Act 2001 Sch 2.]**
cy-pres in accordance with a scheme,
 - (vi) in payment of the costs, charges and expenses of and incidental to the exercise of any of the provisions of this Act,

although such powers may not be authorised or permitted by the trusts or powers affecting the charity and shall have like effect and validity as if such powers had been authorised or directed by the express terms of the trust affecting the charity, and subject as aforesaid, land, investments and property purchased out of capital monies shall be held on the like trusts as the endowment from whence such capital monies arose.

2 Extension of the meaning of charitable purposes

(1) Trusts expressed to be for the purpose of benevolence, philanthropy, or social welfare which are for the public benefit shall be charitable trusts.

(2) A gift, devise, bequest or trust providing for the perpetual putting and keeping in due order and proper repair of private graves and monuments with their enclosures, or partly for such purposes and partly for other charitable purposes, shall be deemed to be and always to have been a valid gift or disposition for charitable purposes.

[Subs (2) added by Burials Act 1986 Sch 5.]

PART II

Application of Property Cy-pres, Legal Proceedings and Charitable Companies

3 Occasions for applying property cy-pres

(1) Subject to subsection (2) below, the circumstance 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-pres 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-pres, 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 area, provide for enlarging the area.

(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-pres, to secure its effective use for charity by taking steps to enable it to be so applied.

4 Application cy-pres of gifts of donors unknown or disclaiming

(1) Property given for specific charitable purposes which fail shall be applicable cy-pres 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
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(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-pres 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 provisions 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-pres 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 properly 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.

Miscellaneous

5 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) Nothing in the foregoing subsection shall apply to the taking of proceedings by the Attorney General with or without a relator.

6 Charitable companies

(1)

[Subs (1) repealed by Charities Registration Act 1989 Sch.]

(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.

PART III

Miscellaneous Provisions as to Charities and their Affairs

7 Manner of giving notice of charity meetings, etc

(1) All notices which are required or authorised by the trusts of a charity to be given to a charity trustee, member or subscriber may be sent by post, and, if sent by post, may be addressed to any address given as his in the list of charity trustees, members or subscribers for the time being in use at the office or principal office of the charity.

(2) Where any such notice required to be given as aforesaid is given by post, it shall be deemed to have been given by the time at which the letter containing it would be delivered in the ordinary course of post.

(3) No notice required to be given as aforesaid of any meeting or election need be given to any charity trustee, member or subscriber, if in the list above mentioned he has no address in the British Islands.

8 Manner of executing instruments

(1) Charity trustees may, subject to the trusts of the charity, confer on any of their body (not being less than two in number) a general authority, or an authority limited in such manner as the trustees think fit, to execute in the names and on behalf of the trustees assurances or other deeds or instruments for giving effect to transactions to which the trustees are a party; and any deed or instrument executed in pursuance of an authority so given shall be of the same effect as if executed by the whole body.

(2) An authority under subsection (1) above-

- (a) shall suffice for any deed or instrument if it is given in writing or by resolution of a meeting of the trustees, notwithstanding the want of any formality that would be required in giving an authority apart from that subsection;
- (b) may be given so as to make the powers conferred exercisable by any of the trustees, or may be restricted to named persons or in any other way;
- (c) subject to any such restriction, and until it is revoked, shall, notwithstanding any change in the charity trustees, have effect as a continuing authority given by and to the persons who from time to time are of their body.

(3) In any authority under this section to execute a deed or instrument in the names and on behalf of charity trustees there shall, unless the contrary intention appears, be implied authority to execute it for them in the name and on behalf of any other person, in any case in which the charity trustees could do so.

(4) Where a deed or instrument purports to be executed in pursuance of this section, then in favour of a person who (then or afterwards) in good faith acquires for money or money's worth an interest in or charge on property or the benefit of any covenant or agreement expressed to be entered into by the charity trustees, it shall be conclusively presumed to have been duly executed by virtue of this section.

(5) The powers conferred by this section shall be in addition to and not in derogation of any other powers.

9 Transfer and evidence of title to property vested in trustees

(1) Where, under the trusts of a charity, trustees of property held for the purposes of the charity may be appointed or discharged by resolution of a meeting of the charity trustees, members or other persons, a memorandum declaring a trustee to have been so appointed or discharged shall be sufficient evidence of that fact, if the memorandum is signed either at the meeting by the person presiding or in some other manner directed by the meeting, and is attested by two persons present at the meeting.

(2) A memorandum evidencing the appointment or discharge of a trustee under subsection (1) above, if executed as a deed, shall have the like operation under section

thirty-nine of the Trustee Act, 1961, (which relates to vesting declarations as respects trust property in deeds appointing or discharging trustees), as if the appointment or discharge were effected by the deed.

(3) For the purposes of this section, where a document purports to have been signed and attested as mentioned in subsection (1) above, then on proof (whether by evidence or as a matter of presumption) of the signature the document shall be presumed to have been so signed and attested, unless the contrary is shown.

(4) This section shall apply to a memorandum made at any time, except that subsection (2) shall apply only to those made after the commencement of this Act.

10 Miscellaneous provisions as to evidence

(1) Where, in any proceedings to recover or compel payment of any rent charge or other periodical payment claimed by or on behalf of a charity out of land or of the rents, profits or other income of land, otherwise than as rent incident to a reversion, it is shown that the rent charge or other periodical payment has at any time been paid for twelve consecutive years to or for the benefit of the charity, that shall be prima facie evidence of the perpetual liability to it of the land or income and no proof of its origin shall be necessary.

(2) In any proceedings, the printed copies of-

- (a) the account of the Isle of Man Charities prepared by J. McHutchin and G. Quirk, published in the year 1831; and
- (b) the Report of the Poor Law Commission dated the 27th March, 1940, and filed in the Rolls Office on the 30th day of April 1940;

shall be admissible as evidence of the documents and facts stated therein.

11 Parochial charities

Where trustees hold any property for the purposes of a recreation ground, or of allotments for the benefit of inhabitants of a district of a local authority, or for other charitable purposes connected with such a district, they may with the consent of the local authority transfer the property to the local authority; and the local authority shall hold the property on the same trusts and subject to the same conditions as the trustees did.

This section shall apply to property held for any public purposes as it applies to property held for charitable purposes.

PART IV

Supplementary

12 Miscellaneous provisions as to orders

(1) Any order made by the Court under this Act may include such incidental or supplementary provisions as the Court thinks expedient for carrying into effect the objects of the order.

(2) An order made by the Court under this Act shall be deemed to have been duly and formally made and not be called in question on the ground only of irregularity or informality, but (subject to any further order) have effect according to its tenor.

13 Rules of Court

The Deemsters may make rules for regulating the practice and procedure of the Court under this Act, but no such rules shall have effect until they have been approved by Tynwald.

[S 13 substituted by Governor's General Functions (Transfer) Act 1980 Sch 1.]

14 Interpretation

In this Act, except in so far as the context otherwise requires-

'**charitable purposes**' means purposes which are exclusively charitable according to the law of the Isle of Man;

'charity' means any institution, corporate or not, which is established for charitable purposes, and is subject to the control of the Court in the exercise of the Court's jurisdiction with respect to charities, except that it does not include-

(a) an ecclesiastical charity within the meaning of Schedule 3 to the Church Act 1992; or

[Para (a) substituted by Church Act 1992 Sch 6.]

(b) a trust of property falling within paragraph 1(2) of that Schedule;

[Para (b) substituted by Church Act 1992 Sch 6.]

'charity trustees' means the persons having the general control and management of the administration of a charity;

'the Court' means the High Court, and includes any judge exercising the jurisdiction of the Court;

'institution' includes any trust or undertaking;

[Definition of 'institution' inserted by Statute Law Revision Act 1982 Sch 1.]

'trusts', in relation to a charity, means the provisions establishing it as a charity and regulating its purposes and administration, whether those provisions take effect by way of trust or not, and in relation to other institutions has a corresponding meaning;

'endowment' means any real or personal property vested or held or controlled by any person or persons for the benefit of a charity.

15 Savings

(1)

[Subs (1) repealed by Statute Law Revision Act 1983 Sch 2.]

(2) The powers vested in the Court under this Act shall not limit the inherent jurisdiction of the Court in relation to charities.

16 Short title and commencement

(1) This Act may be cited as the Charities Act, 1962.

(2) This Act shall come into operation when the Royal Assent thereto has been by the Governor announced to Tynwald and a certificate thereof has been signed by the Governor and the Speaker of the House of Keys.

Schedule

[Sch repealed by Statute Law Revision Act 1983 Sch 2.]
