



Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

^{F1}PART 1

CHARITIES

CHAPTER 10

DECISIONS: NOTICES, REVIEWS AND APPEALS

Annotations:

Amendments (Textual)

- F1** Pt. 1 Ch. 5A inserted (1.10.2010 for specified purposes, 1.11.2012 in so far as not already in force) by Public Services Reform (Scotland) Act 2010 (asp 8), ss. 125(1), 134(7); S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2012/218, art. 2

Modifications etc. (not altering text)

- C1** Pt. 1 Ch. 10 applied (1.4.2011) by The Scottish Charitable Incorporated Organisations (Removal from Register and Dissolution) Regulations 2011 (S.S.I. 2011/237), regs. 1(1), 3(10)

Preliminary

^{F2}71 Decisions

This Chapter applies to any decision by OSCR (or by a person to whom OSCR's functions are delegated by virtue of section 38) to—

- (a) refuse an application for entry in the Register, including entry as a SCIO under section 55, 58 or 60,
- (b) refuse to disapply section 3(3)(b) in relation to a charity,
- (c) give a direction under section 11(3),
- (d) give a direction under section 12(2) or (3),

Changes to legislation: There are currently no known outstanding effects for the Charities and Trustee Investment (Scotland) Act 2005, Chapter 10. (See end of Document for details)

- (e) refuse to give a direction under section 12(2),
- (f) refuse to consent to a charity taking any action set out in section 16(2),
- (g) give a direction under section 28(3),
- (h) make a requirement under section 29(1),
- (i) remove a charity from the Register under section 30(1) or (3),
- [^{F3}(ia) give a direction under section 30(1)(a),]
- (j) suspend a person under section 31(4),
- (k) give a direction under section 31(5) or (8),
- (l) give a direction under section 31(6), (7) or (9),
- (m) refuse an application made for the purposes of section 39(1),
- [^{F2}(ma) refuse an application made for the purposes of section 43A,]
- (n) give a direction under section 53(2),
- (o) give a direction under section 67(7),
- (p) refuse to grant a waiver under section 69(4),
- (q) refuse to designate a charity as a designated religious charity or designated national collector, or
- (r) withdraw the designation of a charity as a designated religious charity or designated national collector.

Annotations:

Amendments (Textual)

- F2** S. 71(ma) inserted (1.10.2010 for specified purposes, 1.11.2012 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 125(2)**, 134(7); S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2012/218, art. 2
- F3** S. 71(ia) inserted (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 121(2)**, 134(7); S.S.I. 2010/221, art. 3(2), Sch.

Commencement Information

- I1** S. 71 in force at 1.4.2006 by [S.S.I. 2006/189](#), art. 2(1), **Sch. Pt. 1**

Notice and effect of decisions

72 Notice of decisions

- (1) Any person who makes a decision to which this Chapter applies must, as soon as reasonably practicable after doing so, give notice of it to the person specified in subsection (2) and, where the decision is made by a person to whom OSCR's functions have been delegated by virtue of section 38, OSCR.
- (2) That person is—
 - (a) in the case of a decision referred to in paragraph (a), (g), (j), (k), (n) or (p) of section 71, the person in respect of whom the decision was made,
 - (b) in the case of a decision referred to in paragraph (e) of that section, the charity which requested OSCR to conduct a review under section 12, and
 - (c) in the case of any other decision referred to in that section, the charity in respect of which the decision was made.
- (3) A notice given under this section must—

Changes to legislation: There are currently no known outstanding effects for the Charities and Trustee Investment (Scotland) Act 2005, Chapter 10. (See end of Document for details)

- (a) set out the decision,
- (b) give the reasons for the decision, and
- (c) where the notice is given to a person specified in subsection (2), advise the recipient of—
 - (i) the right to request OSCR to review the decision, and
 - (ii) the period within which such a request must be made.

Annotations:

Commencement Information

I2 S. 72 in force at 1.4.2006 by S.S.I. 2006/189, art. 2(1), **Sch. Pt. 1**

73 Effect of decisions

- (1) Unless subsection (2) or (3) provides otherwise, a decision to which this Chapter applies (and any direction, requirement, suspension or other act in pursuance of such a decision) has effect from the day on which the notice required by section 72 is given.
- (2) A decision referred to in section 71(d), (i), [^{F4}(ia),] (o) or (r) (and any direction, requirement, suspension or other act in pursuance of such a decision) is of no effect unless and until the notice required by section 72 is given and—
 - (a) the period within which OSCR must, on request, review the decision expires without a request being made, or
 - (b) where OSCR, on a request made within that period, confirms the decision (with or without variations)—
 - (i) the period within which that decision by OSCR may be appealed under section 76 to the [^{F5}First-tier Tribunal] expires without an appeal being made, or
 - (ii) where such an appeal is made, it is abandoned or finally determined (by the [^{F6}First-tier Tribunal] or, as the case may be, the [^{F7}Upper Tribunal]).
- (3) A decision referred to in section 71(h) (and any corresponding requirement) is of no effect unless and until the notice required by section 72 is given and—
 - (a) the period within which OSCR must, on request, review the decision expires without a request being made, or
 - (b) where such a request is made, the date on which OSCR confirms the decision (with or without variations).

Annotations:

Amendments (Textual)

- F4** Word in s. 73(2) inserted (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 121(3)**, 134(7); S.S.I. 2010/221, art. 3(2), **Sch.**
- F5** Words in s. 73(2)(b)(i) substituted (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Scottish Charity Appeals Panel\) Regulations 2018 \(S.S.I. 2018/1\)](#), reg. 1(1), **sch. 2 para. 2(2)(a)**
- F6** Words in s. 73(2)(b)(ii) substituted (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Scottish Charity Appeals Panel\) Regulations 2018 \(S.S.I. 2018/1\)](#), reg. 1(1), **sch. 2 para. 2(2)(b)(i)**

Changes to legislation: There are currently no known outstanding effects for the Charities and Trustee Investment (Scotland) Act 2005, Chapter 10. (See end of Document for details)

F7 Words in s. 73(2)(b)(ii) substituted (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Scottish Charity Appeals Panel\) Regulations 2018 \(S.S.I. 2018/1\)](#), reg. 1(1), [sch. 2 para. 2\(2\)\(b\)\(ii\)](#)

Commencement Information

I3 S. 73 in force at 1.4.2006 by [S.S.I. 2006/189](#), art. 2(1), [Sch. Pt. 1](#)

Reviews

74 Review of decisions

- (1) OSCR must, within 21 days of being requested to do so by a person given notice under section 72 of a decision to which this Chapter applies—
 - (a) review the decision,
 - (b) confirm, vary, reverse or revoke it, and
 - (c) give notice of its decision under paragraph (b) to the person who requested the review.
- (2) A notice under paragraph (c) of subsection (1) must set out OSCR's reasons for its decision under paragraph (b) of that section.
- (3) The duty in subsection (1) applies only if the request is made within 21 days of the notice under section 72 being given to the person making the request.
- (4) OSCR must publish any further procedures in accordance with which reviews are to be conducted.

Annotations:

Commencement Information

I4 S. 74 in force at 1.4.2006 by [S.S.I. 2006/189](#), art. 2(1), [Sch. Pt. 1](#)

Appeals

^{F8}75 Scottish Charity Appeals Panel

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Annotations:

Amendments (Textual)

F8 S. 75 repealed (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Scottish Charity Appeals Panel\) Regulations 2018 \(S.S.I. 2018/1\)](#), reg. 1(1), [sch. 2 para. 2\(3\)](#)

76 [^{F9}Appeals to the First-tier Tribunal]

- (1) Where OSCR—
 - (a) confirms a decision under section 74(1), or
 - (b) reconfirms a decision under section 77(1),

Changes to legislation: There are currently no known outstanding effects for the Charities and Trustee Investment (Scotland) Act 2005, Chapter 10. (See end of Document for details)

- the decision (or, where OSCR varies the decision on confirming or reconfirming it, the decision as varied) may be appealed to the [F10First-tier Tribunal] .
- (2) A decision referred to in paragraph (g) or (h) of section 71 (whether or not confirmed with variations) may not, despite subsection (1)(a), be appealed to the [F11First-tier Tribunal] .
- (3) It is for the person whose request or, as the case may be, earlier appeal under this section caused OSCR to confirm or reconfirm the decision to make an appeal under subsection (1).
- (4) Such an appeal must be made within 28 days of the person entitled to appeal it being given notice of the confirmation or reconfirmation.
- (5) The [F12First-tier Tribunal] may—
- (a) confirm a decision appealed to it,
 - (b) quash such a decision and direct OSCR to take such other action, if any, as the [F13First-tier Tribunal] thinks fit by such time as may be specified in the direction, or
 - (c) remit such a decision back to OSCR, together with the [F14First-tier Tribunal's] reasons for doing so, for reconsideration.

Annotations:

Amendments (Textual)

- F9** S. 76 title substituted (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Scottish Charity Appeals Panel\) Regulations 2018 \(S.S.I. 2018/1\)](#), reg. 1(1), **sch. 2 para. 2(4)(d)**
- F10** Words in s. 76(1) substituted (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Scottish Charity Appeals Panel\) Regulations 2018 \(S.S.I. 2018/1\)](#), reg. 1(1), **sch. 2 para. 2(4)(a)**
- F11** Words in s. 76(2) substituted (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Scottish Charity Appeals Panel\) Regulations 2018 \(S.S.I. 2018/1\)](#), reg. 1(1), **sch. 2 para. 2(4)(b)**
- F12** Words in s. 76(5) substituted (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Scottish Charity Appeals Panel\) Regulations 2018 \(S.S.I. 2018/1\)](#), reg. 1(1), **sch. 2 para. 2(4)(c)(i)**
- F13** Words in s. 76(5)(b) substituted (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Scottish Charity Appeals Panel\) Regulations 2018 \(S.S.I. 2018/1\)](#), reg. 1(1), **sch. 2 para. 2(4)(c)(ii)**
- F14** Words in s. 76(5)(c) substituted (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Scottish Charity Appeals Panel\) Regulations 2018 \(S.S.I. 2018/1\)](#), reg. 1(1), **sch. 2 para. 2(4)(c)(iii)**

Commencement Information

- I5** S. 76 in force at 1.4.2006 by [S.S.I. 2006/189](#), art. 2(1), **Sch. Pt. 1**

77 Reconsideration of decision remitted to OSCR

- (1) OSCR must, within 14 days of a decision being remitted to it under section 76(5)(c)—
- (a) reconsider the decision,
 - (b) confirm, vary, reverse or revoke it, and
 - (c) give notice of its decision under paragraph (b) to the person who appealed its earlier decision to the [F15First-tier Tribunal] .

Changes to legislation: There are currently no known outstanding effects for the Charities and Trustee Investment (Scotland) Act 2005, Chapter 10. (See end of Document for details)

(2) That notice must set out OSCR's reasons for its decision under subsection (1)(b).

Annotations:

Amendments (Textual)

F15 Words in s. 77(1)(c) substituted (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Scottish Charity Appeals Panel\) Regulations 2018 \(S.S.I. 2018/1\)](#), reg. 1(1), **sch. 2 para. 2(5)**

Commencement Information

I6 S. 77 in force at 1.4.2006 by [S.S.I. 2006/189](#), art. 2(1), **Sch. Pt. 1**

78 Appeals to Court of Session

^{F16}(1)

- (2) Any decision of OSCR (or by a person to whom OSCR's functions are delegated by virtue of section 38) to suspend a person by notice under section 31(4) may be appealed by the person suspended to the Court of Session.
- (3) The Court of Session may—
- (a) confirm the decision appealed to it, or
 - (b) quash the decision and direct OSCR (or the person to whom OSCR's functions are delegated by virtue of section 38, as the case may be) to take such action, if any, as the Court thinks fit by such time as may be specified in the direction.

Annotations:

Amendments (Textual)

F16 S. 78(1) repealed (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Scottish Charity Appeals Panel\) Regulations 2018 \(S.S.I. 2018/1\)](#), reg. 1(1), **sch. 2 para. 2(6)**

Commencement Information

I7 S. 78 in force at 1.4.2006 by [S.S.I. 2006/189](#), art. 2(1), **Sch. Pt. 1**

Changes to legislation:

There are currently no known outstanding effects for the Charities and Trustee Investment (Scotland) Act 2005, Chapter 10.