



# Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

## PART 1

### CHARITIES

#### CHAPTER 4

##### SUPERVISION OF CHARITIES ETC.

###### *Inquiries*

### 28 Inquiries about charities etc.

- (1) OSCR may at any time make inquiries, either generally or for particular purposes, with regard to—
- (a) a charity,
  - (b) a body controlled by a charity (or by two or more charities, when taken together),
  - (c) a body which is not entered in the Register which appears to OSCR to represent itself as a charity (or which would, but for section 14, so appear),
  - (d) a person not falling within paragraph (a) to (c) who appears to OSCR to act, or to represent itself as acting, for or on behalf of—
    - (i) a charity, or
    - (ii) a body falling within paragraph (b) or (c),
  - (e) a person who appears to OSCR to represent a body which is not entered in the Register as a charity,
  - (f) any particular type of charity, of body falling within paragraph (b) or (c), or of person falling within paragraph (d) or (e).
- (2) OSCR may make inquiries under subsection (1) of its own accord or on the representation of any person.

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- (3) OSCR may direct any charity, body or person with regard to which it is making inquiries under subsection (1) not to undertake activities specified in the direction for such period of not more than 6 months as is specified in the direction.
- (4) A direction under subsection (3) given to a person falling within paragraph (d) or (e) of subsection (1) may be given only in relation to activities which that person undertakes for or on behalf of the charity or body to which the inquiries relate.
- (5) A direction under subsection (3)—
  - (a) may be revoked at any time,
  - (b) may be varied, but not so as to have effect for a period of more than 6 months from the date on which it is given.
- (6) A person who, without reasonable excuse, refuses or fails to comply with a direction under subsection (3) is guilty of an offence.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 4 on the standard scale or imprisonment for a period not exceeding 3 months, or to both.

#### Commencement Information

**II** S. 28 in force at 1.4.2006 by S.S.I. 2006/189, art. 2(1), Sch. Pt. 1 (with art. 3(2)-(4))

## 29 Power of OSCR to obtain information for inquiries

- (1) OSCR may by notice require any person to provide to it—
  - (a) any document, or a copy of or extract from any document,
  - (b) documents of any type, or copies of or extracts from such documents,
  - (c) any information or explanation,
 which OSCR considers necessary for the purposes of inquiries under section 28.
- (2) The notice must specify—
  - (a) the documents, type of documents, copies, extracts, information or explanation which the person is to provide to OSCR,
  - (b) the date (which must be at least 14 days after the date on which the notice is given) by which the person must do so, and
  - (c) the effect of subsection (6).
- (3) Subsection (1) does not authorise OSCR to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.
- (4) OSCR must not disclose any document, information or explanation provided in response to a requirement under subsection (1) except for the purposes of the inquiries in connection with which the requirement was made.
- (5) OSCR may pay to any person a sum in respect of expenses reasonably incurred by the person in complying with a requirement under subsection (1).
- (6) A person who, without reasonable excuse, refuses or fails to comply with a requirement under subsection (1) is guilty of an offence and liable on summary

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conviction to a fine not exceeding level 4 on the standard scale or imprisonment for a period not exceeding 3 months, or to both.

#### Commencement Information

**I2** S. 29 in force at 1.4.2006 by S.S.I. 2006/189, art. 2(1), Sch. Pt. 1

### 30 Removal from Register of charity which no longer meets charity test

- (1) Where it appears to OSCR, as a result of inquiries under section 28, that a charity no longer meets the charity test it must—
- (a) direct the charity to take, within such period as may be specified in the direction, such steps as OSCR considers necessary for the purposes of meeting the charity test, or
  - (b) remove the charity from the Register.
- (2) Steps specified in a direction under subsection (1)(a) may include applying to OSCR for approval under section 39 of a reorganisation scheme in relation to the charity's constitution.

[<sup>F1</sup>(2A) The power of OSCR to give a direction under subsection (1)(a) includes the power to—

- (a) vary the direction, but only by—
    - (i) extending the time period specified in the direction, or
    - (ii) removing steps which the charity is required to take, or
  - (b) revoke such a direction.]
- (3) OSCR must, if a charity fails to comply with a direction under subsection (1)(a), remove the charity from the Register.

#### Textual Amendments

**F1** S. 30(2A) inserted (1.8.2010) by Public Services Reform (Scotland) Act 2010 (asp 8), ss. 121(1), 134(7); S.S.I. 2010/221, art. 3(2), Sch.

#### Commencement Information

**I3** S. 30 in force at 24.4.2006 by S.S.I. 2006/189, art. 2(2), Sch. Pt. 2

### 31 Powers of OSCR following inquiries

- (1) Subsections (4), (6) and (7) apply where it appears to OSCR, as a result of inquiries under section 28—
- (a) that there has been misconduct in the administration of—
    - (i) a charity, or
    - (ii) a body controlled by a charity, or
  - (b) that it is necessary or desirable to act for the purpose of protecting the property of a charity or securing a proper application of such property for its purposes.
- (2) Subsections (5) to (7) apply where it appears to OSCR, as a result of inquiries under section 28—

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- (a) that a body which is not a charity is being or has been represented as a charity, or
  - (b) that a charity which is not entitled to refer to itself in either of the ways described in section 13(2) is being or has been represented as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland.
- (3) Subsections (8) and (9) apply where it appears to OSCR, as a result of inquiries under section 28, that there is or has been misconduct by a person falling within section 28(1) (d) in any activity which the person undertakes for or on behalf of the charity or body referred to in that provision.
- (4) OSCR may, by notice, suspend any person concerned in the management or control of the charity or body who appears to it to—
- (a) have been responsible for or privy to the misconduct,
  - (b) have contributed to, or facilitated, the misconduct, or
  - (c) be unable or unfit to perform that person's functions in relation to the property of the charity or body.
- (5) OSCR may direct—
- (a) the body representing itself as a charity,
  - (b) the person representing the body as a charity,
  - (c) the charity representing itself as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland, or, as the case may be
  - (d) the person representing the charity as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland,
- to stop doing so.
- (6) OSCR may give a direction restricting 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 or body without OSCR's consent.
- (7) OSCR may direct any relevant financial institution or other person holding property on behalf of the charity or body or of any person concerned in its management or control not to part with the property without OSCR's consent.
- (8) OSCR may direct the person—
- (a) to cease acting, or representing itself as acting, for or on behalf of the charity or body in any activity specified in the direction,
  - (b) to pay to the charity or body, within such period as the direction may specify, any sums which it has collected for the charity or body and which are held by it or by any relevant financial institution or other person on its behalf, after deducting any sums payable to the person or any other person under an agreement with the charity or body.
- (9) OSCR may direct any relevant financial institution or other person holding property which OSCR considers to be, or to represent, sums collected for the charity or body not to part with the property without OSCR's consent.
- (10) OSCR's power to suspend a person by giving notice under subsection (4)(a) or (b) does not apply if OSCR considers that the person has acted honestly and reasonably in relation to the misconduct concerned and ought fairly to be excused.

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#### Commencement Information

**I4** S. 31 in force at 1.4.2006 by S.S.I. 2006/189, art. 2(1), Sch. Pt. 1 (with art. 3(2)-(4))

### 32 Suspensions and directions: procedure

- (1) A suspension under subsection (4) and a direction under any of subsections (5) to (9) of section 31—
  - (a) has effect for such period of not more than 6 months as is specified in the suspension or direction,
  - (b) may be revoked at any time,
  - (c) may be varied, but not so as to have effect for a period of more than 6 months from the date on which the suspension or direction first has effect.
- (2) Where such a suspension has been made or direction has been given, a further suspension or direction may be made or given under section 31 but the further suspension or direction ceases to have effect on the same date as the original suspension or direction (unless stated to cease to have effect earlier).
- (3) A copy of the notice given under section 72 in respect of a—
  - (a) suspension under subsection (4) of section 31, or
  - (b) direction under subsection (5)(b) or (d) or (8) of that section,must be given to the charity or body in question.
- (4) A copy of the notice given under section 72 in respect of a direction under subsection (7) or (9) of that section must be given to the person directed.
- (5) A person who, without reasonable excuse—
  - (a) contravenes a suspension under subsection (4) of section 31, or
  - (b) refuses or fails to comply with a direction under any of subsections (5) to (9) of that section,is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a period not exceeding 6 months, or to both.

#### Commencement Information

**I5** S. 32 in force at 1.4.2006 by S.S.I. 2006/189, art. 2(1), Sch. Pt. 1

### 33 Reports on inquiries

- (1) OSCR must prepare a report of the subject matter of inquiries made under section 28 if—
  - (a) as a result of the inquiries it—
    - (i) gives a direction, or removes a charity from the Register, under section 30,
    - (ii) suspends a person under subsection (4) of section 31, or
    - (iii) gives a direction under any of subsections (5) to (9) of that section, or

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- (b) in any other case, it is requested to do so by the person in respect of whom the inquiries were made and it has not previously prepared a report of the subject matter of those inquiries under this subsection or subsection (2).
- (2) OSCR may prepare a report of the subject matter of any other inquiries under section 28.
- (3) A report prepared under this section may relate to two or more inquiries.
- (4) Apart from identifying the person in respect of whom inquiries were made, a report under this section must not—
  - (a) mention the name of any person, or
  - (b) contain any particulars which, in OSCR's opinion—
    - (i) are likely to identify any person, and
    - (ii) can be omitted without impairing the effectiveness of the report,
 unless OSCR considers it is necessary to do so.
- (5) OSCR must—
  - (a) send a copy of a report prepared under subsection (1) to the person in respect of whom the inquiries were made, and
  - (b) publish a report prepared under this section or such other statement of the result of inquiries made under section 28 as OSCR thinks fit in such manner as OSCR thinks fit.

#### Commencement Information

**I6** S. 33 in force at 1.4.2006 by S.S.I. 2006/189, art. 2(1), Sch. Pt. 1

### *Powers of Court of Session*

#### **34 Powers of Court of Session**

- (1) Where, on an application by OSCR, it appears to the Court of Session—
  - (a) that there is or has been misconduct in the administration of—
    - (i) a charity, or
    - (ii) a body controlled by a charity (or by two or more charities, when taken together), or
  - (b) that it is necessary or desirable to act for the purpose of protecting the property of a charity or securing a proper application of such property for its purposes, the court may exercise any of the powers set out in subsection (5)(a) and (c) to (g).
- (2) Where, on an application by OSCR, it appears to the Court of Session that a body which is not a charity is or has been representing itself as a charity, the court may exercise any of the powers set out in subsection (5)(b) to (g).
- (3) Where, on an application by OSCR, it appears to the Court of Session that a person is or has been representing a body which is not a charity as a charity, the court may exercise any of the powers set out in subsection (5)(f) to (h).
- (4) Where, on an application by OSCR, it appears to the Court of Session that a charity which is not entitled to refer to itself in either of the ways described in section 13(2)

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is being or has been represented as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland, the court may exercise any of the powers set out in subsections (5)(f), (g) and (i).

- (5) Those powers are power to—
- (a) interdict (whether temporarily or permanently) the charity or body from such action as the court thinks fit,
  - (b) interdict (whether temporarily or permanently) the body from representing itself as a charity or from such other action as the court thinks fit,
  - (c) appoint a judicial factor (whether temporarily or permanently) to manage the affairs of the charity or body,
  - (d) where the charity or body is a trust, appoint a trustee,
  - (e) suspend or remove any person concerned in the management or control of the charity or body,
- [<sup>F2</sup>(ea) make an order declaring that any person who was concerned in the management or control of a charity or body is to be treated, for the purpose of section 69(2)(c) (disqualification from being charity trustee) as having been removed from being concerned in the management or control of the charity or body, notwithstanding that—
- (i) the person is no longer concerned in the management or control of the charity or body,
  - (ii) the body is no longer a charity,
  - (iii) the body is no longer controlled by a charity (or charities), or
  - (iv) the charity or body has ceased to exist,]
- (f) order any relevant financial institution or other person holding property on behalf of the charity or body or of any person concerned in its management or control not to part with the property without the court's consent,
  - (g) make an order restricting 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 or body without the court's consent,
  - (h) interdict (whether temporarily or permanently) the person from representing the body as a charity or from such other action as the court thinks fit,
  - (i) interdict (whether temporarily or permanently) the charity or, as the case may be, the person from representing the charity as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland or from such other action as the court thinks fit.
- (6) Where the court appoints a trustee in pursuance of subsection (5)(d), section 22 of the Trusts (Scotland) Act 1921 (c. 58) applies as if the trustee had been appointed under that section.
- (7) The power in subsection (5)(g) applies despite anything in the constitution of the charity or body.
- (8) Subsection (9) applies where, on an application by OSCR, it appears to the Court of Session that there is or has been misconduct by a person falling within section 28(1)(d) in any activity which the person undertakes for or on behalf of the charity or body referred to in that provision.
- (9) The court may—
- (a) interdict (whether temporarily or permanently) the person from acting, or representing itself as acting, on behalf of the charity or body,

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- (b) order the person to pay to the charity or body any sums which it has collected for the charity or body and which are held by it, any relevant financial institution or other person holding money on its behalf, after deducting any sums payable to the person or any other person under an agreement with the charity or body,
  - (c) order any relevant financial institution or other person holding property which the court considers to be, or to represent, sums collected for the charity or body not to part with the property without the court's consent.
- (10) The court may—
- (a) recall the suspension of a person in pursuance of subsection (5)(e),
  - (b) vary or recall an order in pursuance of subsection (5)(f) or (g) or under subsection (9)(b) or (c).

#### Textual Amendments

**F2** S. 34(5)(ea) inserted (1.8.2010) by Public Services Reform (Scotland) Act 2010 (asp 8), ss. 122, 134(7); S.S.I. 2010/221, art. 3(2), Sch.

#### Commencement Information

**I7** S. 34 in force at 1.4.2006 by S.S.I. 2006/189, art. 2(1), Sch. Pt. 1 (with art. 3(2)-(4))

### 35 Transfer schemes

- (1) The Court of Session may, on an application by OSCR, approve a scheme prepared by OSCR in accordance with regulations made by the Scottish Ministers for the transfer to a charity specified in the scheme of any assets of—
- (a) another charity,
  - (b) a body which is controlled by a charity (or by two or more charities, when taken together),
  - (c) a body which is not a charity but which is or has been representing itself as a charity.
- (2) The court may approve a scheme in relation to a charity only if it is satisfied—
- (a) that there is or has been misconduct in the administration of the charity,
  - (b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application of such property for its purposes, and
  - (c) that the charity's purposes would be better achieved by transferring its assets to another charity.
- (3) The court may approve a scheme in relation to a body falling within paragraph (b) of subsection (1) only if it is satisfied—
- (a) that there is or has been misconduct in the administration of the body or any of the charities which control it,
  - (b) that it is necessary or desirable to act for the purpose of protecting the property of the body or any such charity, and
  - (c) that the transfer provided for by the scheme is reasonable.
- (4) The court may approve a scheme in relation to a body falling within paragraph (c) of subsection (1) only if it is satisfied—



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- (a) that the body falls within that paragraph, and
  - (b) that the transfer provided for by the scheme is reasonable.
- (5) The court may approve a scheme under this section subject to modifications.
- (6) A charity receiving property in pursuance of a scheme approved under this section may apply that property for its purposes as it thinks fit.

#### Commencement Information

**I8** S. 35 in force at 1.1.2006 for specified purposes by S.S.I. 2005/644, art. 2(1), Sch. 1

**I9** S. 35 in force at 1.4.2006 in so far as not already in force by S.S.I. 2006/189, art. 2(1), Sch. Pt. 1

### 36 Powers in relation to English and Welsh charities

- (1) Subsection (2) applies where the [<sup>F3</sup> Charity Commission for England and Wales informs ] OSCR that a relevant financial institution or other person in Scotland holds moveable property on behalf of a body—
- (a) which is registered as a charity in England and Wales [<sup>F4</sup>in accordance with section 3A] of the Charities Act 1993 (c. 10), or
  - (b) which, by virtue of [<sup>F5</sup>subsection (2) of that section,] is not required to register as a charity under that section.
- (2) The Court of Session may, on an application by OSCR, make an order requiring the relevant financial institution or other person not to part with the property without the court's consent.
- (3) An order under subsection (2) may be made subject to conditions and may be varied or recalled.
- (4) Where the court has made an order under subsection (2) and, on an application by OSCR, it is satisfied as to the matters set out in subsection (5) it may transfer the property to a charity specified in the application—
- (a) which has purposes which are the same as or which resemble closely the purposes of the body whose property is transferred, and
  - (b) which has intimated that it is prepared to receive the property.
- (5) Those matters are—
- (a) that there has been misconduct in the administration of the body, and
  - (b) that it is necessary or desirable to transfer the property for the purpose of protecting it or securing a proper application of it for the purposes of the body from which it is to be transferred.

#### Textual Amendments

**F3** Words in s. 36(1) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 210(a); S.I. 2007/309, art. 2, Sch.

**F4** Words in s. 36(1) substituted (31.1.2009) by Charities Act 2006 (c. 50), s. 79(2), Sch. 8 para. 210(b); S.I. 2008/3267, art. 2, Sch. (with arts. 3-17arts. 3-27) (as amended: (29.9.2009) by S.I. 2009/2648, art. 3; (26.7.2010) by S.I. 2010/1942, art. 2; and (1.8.2011) by S.I. 2011/1725, arts. 1(2), 3, Sch. para. 6)

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- F5** Words in s. 36(1) substituted (31.1.2009) by [Charities Act 2006 \(c. 50\)](#), s. 79(2), **Sch. 8 para. 210(c)**; [S.I. 2008/3267](#), art. 2, Sch. (with arts. 3-17arts. 3-27) (as amended: (29.9.2009) by [S.I. 2009/2648](#), art. 3; (26.7.2010) by [S.I. 2010/1942](#), art. 2; and (1.8.2011) by [S.I. 2011/1725](#), arts. 1(2), 3, Sch. para. 6)

#### Commencement Information

- I10** S. 36 in force at 1.4.2006 by [S.S.I. 2006/189](#), art. 2(1), **Sch. Pt. 1**

## 37 Expenses

In proceedings before it under sections 34 to 36 in relation to a charity, the Court of Session may, instead of awarding expenses against the charity, award expenses against a charity trustee of the charity or against any two or more of its charity trustees jointly and severally.

#### Commencement Information

- I11** S. 37 in force at 1.4.2006 by [S.S.I. 2006/189](#), art. 2(1), **Sch. Pt. 1**

### *Supplemental*

## 38 Delegation of functions

- (1) It is for the Scottish Ministers to exercise OSCR's functions under sections 28 to 35 (other than section 30) [<sup>F6</sup>and section 70A], and any of its general functions relating to those provisions, in so far as they are exercisable in relation to—
  - (a) charities which are registered social landlords,
  - (b) bodies controlled by any such charity (or by two or more such charities, when taken together), and
  - (c) persons acting for or on behalf of any such charity or body.
- (2) OSCR may authorise any Scottish public authority with mixed functions or no reserved functions to exercise any of the functions referred to in subsection (1) in so far as they are exercisable in relation to—
  - (a) such charities or bodies, or types of charity or body, as OSCR may specify in the authorisation, and
  - (b) persons acting for or on behalf of those charities or bodies.
- (3) Such an authorisation may be made only if the authorised person has other regulatory functions conferred on it by an enactment in relation to the charities or types of charity in respect of which the authorisation is made.
- (4) OSCR must send a copy of such an authorisation to each charity to which it relates.
- (5) OSCR must, before making such an authorisation, consult such persons (including the person it proposes to authorise) as it thinks fit.
- (6) OSCR may, at any time, withdraw an authorisation under subsection (2) (and subsections (4) and (5) apply in relation to such a withdrawal as they apply in relation to an authorisation).

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- (7) Subsection (1) does not prevent OSCR from authorising, under subsection (2), the Scottish Ministers to exercise functions in relation to a person other than a registered social landlord.
- (8) It is not competent for OSCR to exercise any of its functions which are, by virtue of subsection (1) or (2), delegated to another public body or office-holder (unless it considers it necessary or expedient to do so in relation to its functions under section 30).
- (9) Sections 24 to 26 apply in relation to a public body or office-holder to whom OSCR's functions are delegated by virtue of subsection (1) or (2) as they apply to OSCR, but subject to the following modifications—
- (a) references in those sections to OSCR and to OSCR's functions are to be read as references to the public body or office-holder and to the functions delegated to it, and
  - (b) the reference in section 25(1)(d) to section 46 is to be read as a reference to subsection (10).
- (10) Where any of OSCR's functions are delegated to another public body or office-holder by virtue of subsection (1) or (2), a person to whom section 46 applies—
- (a) must report to the body or office-holder on any matter which the person would, but for that delegation, be required by section 46(2) to report on to OSCR,
  - (b) may report to the body or office-holder on any matter which the person would, but for that delegation, be authorised by subsection 46(3) to report on to OSCR.
- (11) A duty or power which arises under subsection (10) is not affected if the person in relation to whom it arises subsequently stops acting in the capacity mentioned in section 46(1).
- (12) In this section “registered social landlord” means a body registered in the register maintained under section 57(1) of the Housing (Scotland) Act 2001 (asp 10).

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#### Textual Amendments

**F6** Words in s. 38(1) inserted (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), ss. 123, 134(7); S.S.I. 2010/221, art. 3(2), Sch.

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#### Commencement Information

**I12** S. 38 in force at 1.4.2006 by S.S.I. 2006/189, art. 2(1), Sch. Pt. 1

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