



# Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

## PART 1

### CHARITIES

## CHAPTER 9

### CHARITY TRUSTEES

#### *Remuneration*

#### **67      Remuneration for services**

- (1) A charity trustee may not be remunerated for services provided to the charity (including services provided in the capacity as a charity trustee or under a contract of employment) unless subsection (2) entitles the trustee to be so remunerated.
- (2) Where a charity trustee of a charity—
  - (a) provides services to or on behalf of the charity, or
  - (b) might benefit from any remuneration for the provision of such services by a person with whom the trustee is connected,the person providing the services (the “service provider”) is entitled to be remunerated from the charity’s funds for doing so only if the conditions set out in subsection (3) are met.
- (3) Those conditions are—
  - (a) that the maximum amount of the remuneration—
    - (i) is set out in a written agreement between the service provider and the charity (or, as the case may be, its charity trustees) under which the service provider is to provide the services in question, and
    - (ii) is reasonable in the circumstances,

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*Status: This is the original version (as it was originally enacted).*

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- (b) that, before entering into the agreement, the charity trustees were satisfied that it would be in the interests of the charity for those services to be provided by the service provider for that maximum amount,
  - (c) that, immediately after entering into the agreement, less than half of the total number of charity trustees of the charity fall within subsection (4), and
  - (d) that the charity's constitution does not contain any provision which expressly prohibits the service provider from receiving the remuneration.
- (4) A charity trustee falls within this subsection if the trustee is—
- (a) party (in the capacity of a service provider) to a written agreement of the type described in subsection (3)(a)(i) under which any obligation is still to be fully discharged,
  - (b) entitled to receive remuneration from the charity's funds otherwise than by virtue of such an agreement, or
  - (c) connected with any other charity trustee who falls within sub-paragraph (a) or (b).
- (5) Nothing in subsections (1) or (2) prevents a charity trustee or other service provider from receiving any remuneration from a charity's funds which that service provider is entitled to receive by virtue of—
- (a) any authorising provision of the charity's constitution which was in force on 15 November 2004,
  - (b) an order made by the Court of Session, or
  - (c) any enactment.
- (6) For the purposes of subsection (5)(a), an “authorising provision” is a provision which refers specifically to the payment of remuneration—
- (a) to the service provider concerned,
  - (b) where that service provider is a charity trustee, to a charity trustee, or
  - (c) where that service provider is connected to a charity trustee, to any person so connected.
- (7) Where a charity trustee or other service provider is remunerated in contravention of this section, the charity may recover the amount of remuneration; and proceedings for its recovery must be taken if OSCR so directs.

## **68      Remuneration: supplementary**

- (1) In section 67—
- “benefit” means any direct or indirect benefit,
  - “maximum amount”, in relation to remuneration, means the maximum amount of the remuneration whether specified in or ascertainable under the terms of the agreement in question,
  - “remuneration” includes any benefit in kind (and “remunerated” is to be construed accordingly),
  - “services” includes goods that are supplied in connection with the provision of services.
- (2) For the purposes of that section, the following persons are “connected” with a charity trustee—
- (a) any person—

- (i) to whom the trustee is married,
    - (ii) who is the civil partner of the trustee, or
    - (iii) with whom the trustee is living as husband and wife or, where the trustee and the other person are of the same sex, in an equivalent relationship,
  - (b) any child, parent, grandchild, grandparent, brother or sister of the trustee (and any spouse of any such person),
  - (c) any institution which is controlled (whether directly or through one or more nominees) by—
    - (i) the charity trustee,
    - (ii) any person with whom the charity trustee is connected by virtue of paragraph (a), (b), (d) or (e), or
    - (iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together,
  - (d) a body corporate in which—
    - (i) the charity trustee has a substantial interest,
    - (ii) any person with whom the charity trustee is connected by virtue of paragraph (a), (b), (c) or (e) has a substantial interest, or
    - (iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together, have a substantial interest,
  - (e) a Scottish partnership in which one or more of the partners is—
    - (i) the charity trustee, or
    - (ii) a person with whom the charity trustee is, by virtue of paragraph (a) or (b), connected.
- (3) For the purposes of subsection (2) a person who is—
- (a) another person's stepchild, or
  - (b) brought up or treated by another person as if the person were a child of the other person,
- is to be treated as that other person's child.
- (4) Section 105 sets out when a person is to be treated as being in control of an institution or as having a substantial interest in a body corporate.