



Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

PART 1

CHARITIES

CHAPTER 9

CHARITY TRUSTEES

General duties

66 Charity trustees: general duties

- (1) A charity trustee must, in exercising functions in that capacity, act in the interests of the charity and must, in particular—
 - (a) seek, in good faith, to ensure that the charity acts in a manner which is consistent with its purposes,
 - (b) act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person, and
 - (c) in circumstances capable of giving rise to a conflict of interest between the charity and any person responsible for the appointment of the charity trustee—
 - (i) put the interests of the charity before those of the other person, or
 - (ii) where any other duty prevents the charity trustee from doing so, disclose the conflicting interest to the charity and refrain from participating in any deliberation or decision of the other charity trustees with respect to the matter in question.
- (2) The charity trustees of a charity must ensure that the charity complies with any direction, requirement, notice or duty imposed on it by virtue of this Act.
- (3) Subsections (1) and (2) are without prejudice to any other duty imposed by enactment or otherwise on a charity trustee in relation to the exercise of functions in that capacity.

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- (4) Any breach of the duty under subsection (1) or (2) is to be treated as being misconduct in the administration of the charity.
- (5) All charity trustees must take such steps as are reasonably practicable for the purposes of ensuring—
 - (a) that any breach of a duty under subsection (1) or (2) is corrected by the trustee concerned and not repeated, and
 - (b) that any trustee who has been in serious or persistent breach of either or both of those duties is removed as a trustee.

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,
 - (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—

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- (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.

Disqualification

69 Disqualification from being charity trustee

- (1) The persons specified in subsection (2) are disqualified from being charity trustees.
- (2) Those persons are any person who—
 - (a) has been convicted of—
 - (i) an offence involving dishonesty,
 - (ii) an offence under this Act,
 - (b) is an undischarged bankrupt,
 - (c) has been removed, under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) or section 34 of this Act, from being concerned in the management or control of any body,
 - (d) has been removed from the office of charity trustee or trustee for a charity by an order made—
 - (i) by the Charity Commissioners for England and Wales under section 18(2)(i) of the Charities Act 1993 (c. 10), section 20(1A)(i) of the Charities Act 1960 (c. 58) or section 20(1) of that Act (as in force before the commencement of section 8 of the Charities Act 1992 (c. 41)), or
 - (ii) by Her Majesty's High Court of Justice in England,
 on the grounds of any misconduct in the administration of the charity for which the person was responsible or to which the person was privy, or which the person's conduct contributed to or facilitated,
 - (e) is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I.2002/3150).
- (3) A person referred to in subsection (2)(a) is not disqualified under subsection (1) if the conviction is spent by virtue of the Rehabilitation of Offenders Act 1974 (c. 53).

- (4) OSCR may, on the application of a person disqualified under subsection (1), waive the disqualification either generally or in relation to a particular charity or type of charity.
- (5) OSCR must notify a waiver under subsection (4) to the person concerned.
- (6) OSCR must not grant a waiver under subsection (4) if to do so would prejudice the operation of the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I.2002/3150).

70 Disqualification: supplementary

- (1) A person who acts as a charity trustee while disqualified by virtue of section 69 is guilty of an offence and liable—
 - (a) on summary conviction, to imprisonment for a period not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both,
 - (b) on conviction on indictment, to imprisonment for a period not exceeding 2 years or a fine or both.
- (2) Any acts done as a charity trustee by a person disqualified by virtue of section 69 from being a charity trustee are not invalid by reason only of the disqualification.
- (3) In section 69(2)(b), “undischarged bankrupt” means a person—
 - (a) whose estate has been sequestrated, who has been adjudged bankrupt or who has granted a trust deed for or entered into an arrangement with creditors, and
 - (b) who has not been discharged under or by virtue of—
 - (i) section 54 or 75(4) of the Bankruptcy (Scotland) Act 1985 (c. 66),
 - (ii) an order under paragraph 11 of Schedule 4 to that Act,
 - (iii) section 279 or 280 of the Insolvency Act 1986 (c. 45), or
 - (iv) any other enactment or rule of law subsisting at the time of the person’s discharge.