



Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

PART 4

GENERAL AND SUPPLEMENTARY

96 Power of charity to participate in certain financial schemes

- (1) Every charity has power to participate in common investment schemes and common deposit schemes.
- (2) Subsection (1) does not apply where a charity's constitution excludes such participation by referring specifically to common investment schemes or, as the case may be, common deposit schemes.
- (3) In this section, "common investment scheme" and "common deposit scheme" have the meanings given to those expressions in sections 24 and 25 of the Charities Act 1993 (c. 10)

97 Financial assistance for benevolent bodies

- (1) The Scottish Ministers may make such payments as they think fit to—
 - (a) any benevolent body, in connection with its activities,
 - (b) any person, in connection with anything done by that person with a view to enabling one or more benevolent bodies, benevolent bodies of a particular type or benevolent bodies generally to implement their purposes to better effect.
- (2) Such payments may include payments in relation to the costs of establishing, dissolving or winding up a benevolent body.
- (3) A payment under subsection (1) may be made by way of grant, loan or otherwise.
- (4) A payment under subsection (1) may be made subject to conditions, including conditions requiring repayment in specified circumstances.

- (5) No payment may be made under subsection (1) to a local authority or any other public body or office-holder.
- (6) The power to make a payment under subsection (1) may be exercised whether or not there is power to make the payment under any other enactment.

98 Rate relief for registered community amateur sports clubs

- (1) Section 4 (reduction and remission of rates payable by charitable and other organisations) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962 (c. 9) is amended as follows.
- (2) In subsection (2)—
 - (a) for the word “or” which follows paragraph (a) substitute—
 - “(aa) are occupied by a registered community amateur sports club and are wholly or mainly used for the purposes of that club (or for the purposes of that and of other clubs which are, or are entitled to be registered as, such clubs);”,
 - (b) for “either paragraph (a) or paragraph (b)” substitute “any of paragraphs (a), (aa) and (b)”.
- (3) In subsection (5), for “paragraph (a), (b) or (c)” substitute “any of paragraphs (a) to (c)”.
- (4) In subsection (10), after paragraph (b) insert—
 - “(c) “registered community amateur sports club” means a registered club for the purposes of Schedule 18 to the Finance Act 2002 (c. 23) ; and the period during which a club is a registered club for those purposes is to be taken to begin with the date on which its registration takes effect and end on the date with effect from which its registration is terminated (whether or not it is registered, or its registration is terminated, with retrospective effect).”
- (5) After subsection (12) insert—
 - “(13) The amendments to this section made by section 98 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) (which extend mandatory relief to, and allow discretionary relief to be given to, registered community amateur sports clubs) have effect only as respects the year 2006–7 and subsequent years.”

99 Population of Register etc.

- (1) OSCR must enter in the Register each body which was, immediately prior to the commencement of paragraph 7(a)(ii) of Schedule 4 to this Act, entitled by virtue of section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) to describe itself as a “Scottish charity”.

- (2) Subsection (1) does not affect OSCR’s power to remove a charity from the Register under section 30.
- (3) The Scottish Ministers may by order—
- (a) disapply section 3(3) in so far as it would otherwise apply to any body entered in the Register under subsection (1) for such period ending no later than 18 months after the commencement of this section as may be specified in the order,
 - (b) provide—
 - (i) that any unregistered charitable body (or any such body of a particular type) may, despite any contrary provision in this Act, refer to itself as a “charity” for such period ending no later than 12 months after the commencement of this section as may be so specified, and
 - (ii) that any provision of this Act or of any other enactment is to apply (with such modifications, if any, as may be so specified) to any such body as if it were entered in the Register for so long as it refers to itself as a “charity”.
- (4) In subsection (3), “unregistered charitable body” means a body which—
- (a) is established under the law of a country or territory other than Scotland,
 - (b) is entitled to refer to itself as a “charity” (by any means or in any language) in that country or territory, and
 - (c) does not require to be entered in the Register under subsection (1).

100 Notices, applications etc.

- (1) In this section, “formal communication” means—
- (a) any notice, notification, direction or consent given, or
 - (b) any request for review, proposal, application (other than an application to a court), report or decision made,
- under or for the purposes of this Act.
- (2) A formal communication must be made in writing.
- (3) A formal communication which is sent by electronic means is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.
- (4) A formal communication is given to or made to a person if it is—
- (a) delivered to the person,
 - (b) sent by post in a prepaid registered letter, or by the recorded delivery service, addressed—
 - (i) where the person is a charity, to the charity at the principal office set out in its entry in the Register or to the charity trustee whose name is so set out at the address so set out,
 - (ii) where the person is an incorporated company or body (other than a charity), to the secretary, chief clerk or chief executive of the company or body at its registered or principal office,
 - (iii) where the person is a public office-holder, to the office-holder at the office-holder’s principal office,

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

- (iv) in any other case, to the person at that person’s usual or last known place of abode, or
 - (c) sent to the person in some other manner (including by electronic means) which the sender considers likely to cause it to be delivered on the same or next day.
- (5) Where a charity’s entry in the Register does not, because of subsection (4) of section 3, include the information specified in subsection (3)(b) of that section, a formal communication may also be given to or made to the charity if it is sent by post in a prepaid registered letter, or by the recorded delivery service, addressed—
- (a) to the charity care of OSCR, or
 - (b) where OSCR is the sender—
 - (i) to the charity at its principal office, or
 - (ii) to the charity trustee whose name is, because of section 3(4), excluded from the Register at the address which is so excluded.
- (6) A formal communication sent under subsection (4)(c) is, unless the contrary is proved, to be deemed to be delivered on the next working day which follows the day on which it is sent.
- (7) In subsection (6), “working day” means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971 (c. 80), is a bank holiday in Scotland.

101 Offences by bodies corporate etc.

- (1) Where an offence under this Act committed—
- (a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is a director, manager or secretary of the body corporate, or
 - (ii) purports to act in any such capacity,
 - (b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is a partner, or
 - (ii) purports to act in that capacity,
 - (c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is concerned in the management or control of the association, or
 - (ii) purports to act in the capacity of a person so concerned,
- the individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate.

102 Ancillary provision

The Scottish Ministers may by order—

- (a) modify any enactment for the purposes of preventing a body established by enactment from failing the charity test by reason of either or both of paragraphs (a) and (b) of section 7(4),
- (b) make such other incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

103 Orders, regulations and rules

- (1) Any power of the Scottish Ministers under this Act to make orders, regulations or rules is exercisable by statutory instrument.
- (2) Any such power includes power to make—
 - (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
 - (b) different provision for different purposes.
- (3) An order under section 102 may modify any enactment, instrument or document.
- (4) A statutory instrument containing an order, regulations or rules under this Act except —
 - (a) an order under section 7(5),
 - (b) an order under section 19(8),
 - (c) regulations under section 64(d),
 - (d) regulations under section 83(1) containing provisions of the type described in section 83(2)(h),
 - (e) where subsection (5) applies, an order under section 102,
 - (f) an order under section 107(2),is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) No—
 - (a) order under section 7(5),
 - (b) order under section 19(8),
 - (c) regulations made by virtue of section 64(d),
 - (d) regulations under section 83(1) containing provisions of the type described in section 83(2)(h), or
 - (e) order under section 102 containing provisions which add to, replace or omit any part of the text of an Act,

may be made unless a draft of the statutory instrument containing the regulations or, as the case may be, order has been laid before, and approved by resolution of, the Parliament.

104 Minor and consequential amendments and repeals

Schedule 4 sets out minor amendments and amendments and repeals consequential on the provisions of this Act.

105 **Meaning of “control” etc.**

- (1) A charity which is able (whether directly or through one or more nominees) to secure that the affairs of a body are conducted in accordance with the charity’s wishes is, for the purposes of sections 28 to 35, to be treated as being in control of that body.
- (2) For the purposes of sections 46(5) and 68(2)—
 - (a) a person who is able to secure that the affairs of an institution are conducted in accordance with the person’s wishes is to be treated as being in control of the institution,
 - (b) a person who—
 - (i) is interested in shares comprised in the equity share capital of a body corporate of a nominal value of more than one-fifth of that share capital, or
 - (ii) is entitled (whether directly or through one or more nominees) to exercise, or control the exercise of, more than one-fifth of the voting power at any general meeting of a body corporate,
 is to be treated as having a substantial interest in the body corporate.
- (3) The rules set out in Part 1 of Schedule 13 to the Companies Act 1985 (c. 6) apply for the purposes of subsection (2) as they apply for the purposes of section 346(4) (connected persons etc.) of that Act (and “equity share capital” and “share” have the same meanings in subsection (2) as they have in that Act).

106 **General interpretation**

In this Act, unless the context otherwise requires—

- “applicant” has the meaning given in section 4(a),
- “benevolent body” has the meaning given in section 79,
- “charitable purposes” means the purposes set out in section 7(2),
- “charity” means a body entered in the Register,
- “charity test” is to be construed in accordance with section 7,
- “charity trustees” means the persons having the general control and management of the administration of a charity,
- “company” means a company formed and registered under the Companies Act 1985 (c. 6) or to which that Act applies as it applies to such a company,
- “constitution”—
 - (a) in relation to a charity or other body established under the Companies Acts, means its memorandum and articles of association,
 - (b) in relation to a charity or other body which is a body of trustees, means the trust deed,
 - (c) in relation to a SCIO, has the meaning given in section 50,
 - (d) in relation to a charity or other body established by enactment, means the enactment which establishes it and states its purposes,
 - (e) in relation to charity or other body established by a Royal charter or warrant, means the Royal charter or warrant, and
 - (f) in the case of any other charity or body, means the instrument which establishes it and states its purposes,

“designated national collector” means a charity designated as such under section 87(4),

“designated religious charity” means a charity designated as such under section 65(1),

“equal opportunities” and “equal opportunity requirements” have the meaning given in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46)

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“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39)

’
“misconduct” includes mismanagement,

“OSCR” means the holder of the Office of the Scottish Charity Regulator,

“the Panel” mean a Scottish Charity Appeals Panel constituted in accordance with section 75(1) of this Act,

“the Register” means the Scottish Charity Register,

“relevant financial institution” means—

(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8)

to accept deposits,

(b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits,

and this definition must be read with section 22 of and Schedule 2 to that Act and any relevant order under that section,

“reorganisation scheme” has the meaning given in section 42(3) and references to “approved reorganisation schemes” are references to schemes approved under section 39 or 40,

“SCIO” has the meaning given in section 49.

107 Short title and commencement

- (1) This Act may be cited as the Charities and Trustee Investment (Scotland) Act 2005.
- (2) This Act (except sections 102 and 103 and this section) comes into force on such day as the Scottish Ministers may by order appoint.