

2006 No. 571

CHARITIES

The Scottish Charity Appeals Panel Rules 2006

Made - - - - - *29th November 2006*

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Coming into force - - - *31st December 2006*

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The Scottish Ministers, in exercise of the powers conferred by paragraph 4(1) of Schedule 2 to the Charities and Trustee Investment (Scotland) Act 2005^(a) and of all other powers enabling them in that behalf and after consultation with the Council on Tribunals and its Scottish Committee in accordance with section 8 of the Tribunals and Inquiries Act 1992^(b), hereby make the following Rules:

PART I
Preliminary

Citation and commencement

1. These Rules may be cited as the Scottish Charity Appeals Panel Rules 2006 and shall come into force on 31st December 2006.

Interpretation

2.— In these Rules—

“the Act” means the Charities and Trustee Investment (Scotland) Act 2005;

“appellant” means a person who appeals to the Panel under section 76 of the Act;

“Chair” means the person appointed by Scottish Ministers under paragraph 1(4) of schedule 2 of the Act, to be the Chair of the Panel;

“decision” means a decision of OSCR referred to in section 76(1) of the Act unless the context requires otherwise;

“direction” means any order or other determination by a Panel other than a decision;

“hearing” means a sitting of the Panel for the purpose of enabling the Panel to take a decision on an appeal or on any question or matter at which the parties are entitled to attend and be heard;

“OSCR” has the meaning given in section 1 of the Act;

“Panel” means the Scottish Charity Appeals Panel constituted under section 75 of the Act;

“register” means the register of appeals and decisions kept in accordance with rule 20; and

(a) 2005 asp 10.

(b) 1992 c.53. Section 8 was amended by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649), Part 8, article 335.

“Secretary” means the person who provides administrative support to the Panel and includes any person assisting in providing that support.

PART II

Appeal

Notice of appeal

3.—(1) An appeal to the Panel in terms of section 76 of the Act shall be made by giving notice in writing in accordance with the following paragraphs.

(2) The notice shall be addressed to the Secretary and shall include—

- (a) the name and address of the appellant;
- (b) the date and, if known, the reference number of the decision against which the appeal is made;
- (c) the name and address of the representative of the appellant (if any) and whether any notice or other correspondence which is required, by these Rules, to be sent to the appellant should be sent to the representative instead of the appellant;
- (d) a brief statement setting out the reasons for the appeal; and
- (e) a statement that the notice is a notice of appeal.

(3) The appellant or the representative of the appellant (if any) must sign the notice of appeal.

Confirmation of appeal by the Secretary

4.—(1) Within 14 days of receipt of the notice of appeal, the Secretary shall—

- (a) send an acknowledgement of receipt of the notice of appeal to the appellant;
- (b) enter the particulars of the appeal referred to in rule 3(2)(a) and (b) in the register; and
- (c) advise the appellant and OSCR, in writing, of the following—
 - (i) the case number of the appeal;
 - (ii) the date by which the appellant may submit written representations to the Panel together with copies of all documentation provided to OSCR for the purpose of OSCR reaching the decision against which the appeal is made; and
 - (iii) the date by which OSCR may make written representations to the Panel and by which it must send to the Panel an authenticated copy of the decision against which the appeal is made.

(2) The date referred to in (1)(c)(ii) is to be no later than 28 days after the date of acknowledgement of receipt of the appeal.

(3) The date referred to in (1)(c)(iii) is to be no later than 42 days after the date of acknowledgement of receipt of the appeal.

Appeal documents

5. The Secretary must as soon as possible after receipt of any document from a party to proceedings, send a copy of that document to the other party.

Withdrawal of appeal

6.—(1) The appellant may withdraw the appeal—

- (a) at any time before the hearing of the appeal, by sending written notice of the withdrawal to the Secretary; or
- (b) at the hearing of the appeal.

(2) Where an appeal is withdrawn, no further appeal may be made in relation to the same decision.

Withdrawal of response by OSCR

7. OSCR may withdraw its response and opposition to an appeal—
- (a) at any time before the hearing of the appeal, by sending written notice of the withdrawal to the Secretary; or
 - (b) at the hearing of the appeal.

PART III

Hearing

Notice of hearing

8.—(1) The Panel must, with due regard to the convenience of the parties, fix the date, time and place of the hearing of the appeal and, where appropriate, set a timetable for the hearing.

(2) The Secretary shall, not less than 14 days before the date fixed by the Panel, send to both parties a notice of hearing.

(3) The notice of hearing must state—

- (a) the date, time and place of the hearing;
- (b) the members of the Panel; and
- (c) the manner and order of proceeding, having regard to any applicable burden and standard of proof and rules of evidence.

(4) The notice of hearing should, where appropriate—

- (a) provide information and guidance as to attendance at the hearing of the parties and witnesses, the bringing of documents, the right of representation or assistance by another person and the procedure applicable to the hearing, having regard to any applicable rules of evidence and burden and standard of proof;
- (b) explain the right of the parties to receive reasons in writing for a decision of the Panel;
- (c) explain the possible advantages of attendance, consequences of non-attendance, and the right of the appellant and of OSCR, if not present and not represented, to make representations in writing; and
- (d) specify the date by which the appellant and OSCR must inform the Panel whether or not they intend to be present or represented at the hearing, and that date must not be later than 7 days before the hearing.

(5) The notice must include a request to inform the Panel of any special needs which any party may have which are relevant to the attendance of that party at the hearing.

Hearing in absence of a party

9.—(1) Where either party to the appeal informs the Panel that it does not intend to appear at the hearing, the Panel shall determine a date by which that party may provide further written submissions to be considered at the Hearing.

(2) The Secretary shall advise both parties to the appeal of the date determined by the Panel in terms of paragraph (1).

(3) Where both parties inform the Panel that they do not intend to appear or be represented at the hearing, the Panel may proceed to decide the appeal at any time after the date determined by the Panel in terms of paragraph (1).

Absence of member of the Panel

10. If, after the commencement of any hearing, a member other than the Chair is absent, the appeal may, with the consent of the parties, be heard by the other two members and, in that event, the Panel shall be deemed to be properly constituted.

Representation

11.—(1) At any hearing a party may conduct his or her case or may be represented by any person whether or not legally qualified but if in any particular case the Panel is satisfied that there is a good reason, it may refuse to permit a particular person to assist or represent a party at the hearing.

(2) Where a party attends a hearing and is not represented by another person, the Panel may assist any party who seems to it to be unable to make the best of his or her own case without advocating the course that party should take.

Failure of parties to attend

12.—(1) If a party fails to be present or represented at a hearing, the Panel may, if it is satisfied that the party was duly notified of the hearing and that there is no good reason for such absence—

- (a) hear and decide the appeal in the absence of the party; or
- (b) adjourn the hearing and may give such directions as it considers necessary (including an order for expenses under rule 21).

(2) Before deciding to dispose of any appeal in the absence of a party, the Panel must consider any representations in writing submitted by that party.

(3) Where an appellant has failed to be present or represented at a hearing of which the appellant was duly notified, and the Panel has disposed of the appeal, no fresh appeal may be made by the appellant to the Panel in relation to the same decision.

Hearings in public or in private

13.—(1) Without prejudice to any other rule of law, all hearings by the Panel must be in public unless the Panel on an application by the parties or on its own cause directs otherwise to ensure a fair hearing.

(2) A direction of the Panel under paragraph (1) may require only part of a hearing of an appeal to be in private.

(3) Without prejudice to any other rule of law, the Panel may prohibit photography, audio recording, visual recording or any other recording at any hearing if satisfied that such a prohibition is desirable in order to ensure a fair hearing.

Exclusion of persons disrupting proceedings

14.—(1) Without prejudice to any other powers it may have, the Panel may exclude from any hearing, or part of it, any person (including a party to the appeal or a representative of a party) whose conduct has disrupted the hearing or whose conduct has otherwise interfered with the administration of justice.

(2) In deciding whether to exercise the power conferred by paragraph (1) the Panel must, apart from other considerations, have regard to—

- (a) the interests of the parties; and
- (b) in the case of the exclusion of a party or a representative of a party, whether the party will be adequately represented.

(3) If the Panel decides to exclude a party it must allow the representative of that party sufficient opportunity to consult the party.

Directions

15.—(1) At any stage of the proceedings the Panel may, either on its own cause or on the application of a party, make such direction as it considers necessary for the hearing of the appeal and in particular may direct—

- (a) a party to provide any further particulars, supplementary statements or documents which may reasonably be required;
- (b) a party which has access to information which is not reasonably available to the other party, to prepare and file a document recording the information;
- (c) a party to set out the issues upon which the Panel requires to hear evidence;
- (d) that evidence should be excluded if the evidence is irrelevant, unnecessary or improperly obtained;
- (e) a party to lodge, before the hearing, an outline argument.

(2) An application by a party for a direction under paragraph (1) (otherwise than during a hearing) must, not later than 7 days before the hearing, be made to the Panel in writing and must set out the direction which the party is seeking to have made together with the reasons for the application.

(3) If a party objects to the direction sought, the Panel must consider the objection and, if it considers it necessary for deciding the application, must give the parties an opportunity of being present or represented before the Panel.

(4) For the purposes of this rule, a party is not obliged to produce a document which that party would be entitled to refuse to produce in civil proceedings before the Court of Session.

(5) In giving effect to this rule, the Panel must take into account the need to protect any matter that relates to intimate personal or financial circumstances, is commercially sensitive or consists of information communicated or obtained in confidence.

Alteration of arrangements for hearing and adjournments

16.—(1) The Panel may, with due regard to the convenience of the parties and prior to commencement of the hearing, alter the date, time or place of any hearing and the Panel must give the parties not less than 14 days notice of any such alteration unless—

- (a) a shorter period of notice is agreed by the parties; or
- (b) the requirement to alter the date of the hearing is due to the illness of a member of the Panel or other exceptional circumstance which affects the availability of a member of the Panel to attend the hearing.

(2) If the Panel alters the date of the hearing under paragraph (1), that date must not, unless the parties agree, be before the date fixed in terms of rule 8(1).

(3) The Panel may from time to time adjourn the hearing and, if the date, time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required.

Persons entitled to be present

17.—(1) Subject to rule 14 the following persons shall be entitled to attend a hearing and the Panel's deliberations on the hearing, whether or not it is in private:

- (a) a member of the Panel not forming part of the Panel for the purpose of the hearing;
- (b) a member of the Scottish Committee of the Council on Tribunals;
- (c) the Secretary; and
- (d) any other person permitted by the Panel with the consent of the parties.

(2) None of the persons specified above who are present at the Panel's deliberations may take any part in those deliberations.

(3) Where the Panel sits in private it may admit persons to the hearing on such terms and conditions as it considers appropriate.

PART IV

Decisions, publication and the register

Decisions of the Panel

18.—(1) A decision of the Panel may be taken by a majority and the decision must record whether it was unanimous or taken by a majority.

(2) Where the Panel is constituted by two members, the Chair shall have a second vote.

(3) A decision of the Panel may be given at the end of the hearing or within 21 days of the hearing.

(4) Whether there has been a hearing at which the parties have attended or not, the decision must—

(a) be recorded as soon as possible in a decision document which must also contain a statement of the reasons in full form for the decision; and

(b) be signed by the Chair and dated.

(5) The Secretary must send a copy of the decision to each party to the appeal together with a notice explaining the rights of the parties to appeal the decision of the Panel to the Court of Session under section 78 of the Act.

(6) Except where a decision is announced at the end of the hearing, it shall be treated as having been made on the date on which the Chair signs the decision.

(7) The Panel may direct that particulars of a decision relating to—

(a) evidence heard before the Panel in private;

(b) evidence which refers to intimate personal or financial circumstances;

(c) evidence which is considered to be commercially sensitive;

(d) evidence which consists of confidential communication; or

(e) any other matter as the Panel considers appropriate for the protection of parties;

must be excluded from publication in terms of rule 19 and from inspection in the register in terms of rule 20.

Publication of decisions

19.—(1) The Panel must make arrangements for the public pronouncement of its decisions, whether by giving its decisions orally at a public hearing or by publishing its decisions in writing.

(2) Where the Panel has made a direction in terms of rule 18(7), the Panel may make any necessary amendments to the text of the decision for the purposes of publication.

(3) Where any decision refers to any evidence that has been heard in private, the material relating to that evidence must be omitted from the decision and the Panel may make any necessary amendments to the text of the decision for the purposes of publication.

(4) Decisions may be published electronically.

The register

20.—(1) A register must be kept by the Panel and must be open for the inspection during reasonable hours by any person without charge.

(2) The register may be made available electronically.

(3) The register must, unless the Panel has directed otherwise, include the following details for each appeal—

- (a) the case number;
- (b) the name of the appellant;
- (c) the decision of OSCR which is being appealed;
- (d) the date, time and place fixed for the hearing or the date the appeal is to be decided in absence of the parties;
- (e) the decision of the Panel.

(4) Where any decision refers to any evidence that has been heard in private, the material relating to that evidence must be omitted from the register.

PART V

General and supplementary

Orders for expenses

21.—(1) Subject to paragraph (2), the Panel may make an order awarding expenses (including outlays)—

- (a) against the appellant (including an appellant who has withdrawn an appeal) if it is of the opinion that the appellant has acted vexatiously or that the conduct of the appellant in making or pursuing an appeal was unreasonable;
- (b) against OSCR where it considers that the decision against which the appeal is made was unreasonable;
- (c) as respects any expenses incurred, or any allowances paid, as a result of a postponement or adjournment of a hearing at the request of either the appellant or OSCR; or
- (d) as respects any expenses incurred as a consequence of the late amendment of reasons for an appeal or reply.

(2) No order may be made under paragraph (1) against the appellant or OSCR without first providing an opportunity of making representations against the making of the order.

(3) An order under paragraph (1) shall require the party against whom it is made to pay the other party either -

- (a) a specified sum in respect of the expenses incurred by that other party in connection with the proceedings; or
- (b) the whole or part of those expenses, on a scale appropriate to ordinary cause actions in the sheriff court, as assessed by the auditor of the sheriff court unless otherwise agreed between the parties.

(4) Counsel's fees and the fees for instruction of Counsel shall be allowed as an item of a party's expenses only where the Panel has sanctioned the employment of Counsel.

Irregularities

22.—(1) Any irregularity resulting from failure to comply with any provision of these Rules or of any direction of the Panel before the Panel has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the Panel, the Panel may give any directions it considers necessary, before reaching its decision, to cure or waive the irregularity.

(3) Clerical mistakes in any document recording a direction or decision of the Panel, or errors arising in such a document from an accidental slip or omission, may be corrected by the Panel by certificate in writing.

Proof of documents and decisions

23.—(1) Any document purporting to be a document duly executed or issued by or on behalf of the Panel shall, unless the contrary is proved, be deemed to be a document so executed or issued as the case may be.

(2) A document purporting to be certified by the Panel to be a true copy of any entry of a decision in the register shall, unless the contrary is proved, be sufficient evidence of the entry and of the matters contained in it.

Method of delivering and receipt of documents

24.—(1) All notices and documents required or authorised by these Rules to be sent to the Panel or the Secretary shall –

- (a) be sent to or presented at the office of the Secretary as notified by the Secretary; or
- (b) where the Secretary has notified the parties that electronic communications are accepted in relation to an appeal, be transmitted by electronic communication to a specified address for such communications.

(2) All notices and documents required by these Rules to be sent by the Panel or the Secretary to the parties may–

- (a) in the case of OSCR–
 - (i) be sent by post or delivered to OSCR at its principal place of business; or
 - (ii) where OSCR have agreed to accept electronic communications, be transmitted by electronic communication to a specified address for such communications.
- (b) in the case of the appellant–
 - (i) be sent by post or delivered to the address specified in the notice of appeal (or the representative of the appellant); or
 - (ii) where the appellant has agreed to accept electronic communications, be transmitted by electronic communication to a specified address for such communications.

(3) Any notice or document sent to a person in accordance with this rule shall, unless the contrary is proved, be deemed to be received–

- (a) where the document is sent by post, on the third day after the day on which it was sent; and
- (b) in any other case, on the day on which the document was transmitted or delivered to that person.

(4) In this rule, “electronic communication” has the same meaning as that contained in section 15 of the Electronic Communications Act 2000^(a).

MALCOLM CHISHOLM
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
29th November 2006

(a) 2000 c.7.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make provision for the procedure in relation to an appeal brought before the Scottish Charity Appeals Panel (“the Panel”) under section 76 of the Charities and Trustee Investment (Scotland) Act 2005.

Part I (rules 1 and 2) sets out the general preliminary matters on citation, commencement and interpretation.

Part II (rules 3-7) sets out the provisions on making an appeal. Rule 3 sets out the content to be included in a notice of appeal, Rule 4 confirms the action to be taken by the Secretary to the Panel upon receipt of a notice of appeal. Rule 5 requires the Secretary to send copies of any documents received from a party to the appeal to the other party. Rules 6 and 7 make provision for the withdrawal of the appeal by the appellant or the response by the Office of the Scottish Charity Regulator (“OSCR”).

Part III (rules 8-17) sets out the provisions connected to the appeal hearing. Rule 8 makes provision for the fixing of the hearing, the issue of a notice of hearing and the contents of that notice. Rule 9 provides that where a party intimates it will not attend the hearing, then an opportunity to make further written submissions will be available to that party. If both parties do not intend to attend then the Panel can hear the appeal in absence of the parties. Rule 10 sets out the position in the event that a Panel member is absent from the hearing. Rule 11 allows a party to be represented at the hearing unless the Panel directs otherwise. Rule 12 provides that a hearing may still proceed if a party fails to attend a hearing after being notified of the hearing.

Rules 13 to 16 give the Panel power to:

- hold a hearing in private if necessary;
- prohibit the recording of the hearing;
- exclude from the hearing any person disrupting it;
- make any direction necessary for the hearing; and
- alter the arrangements for hearing (including adjourning a hearing).

Rule 17 sets out who may be present at a hearing and the Panel’s deliberations.

Part IV (rules 18-20) makes provision for the decision of the Panel (rule 18), the publication of that decision (rule 19) and the keeping of a register of decisions (rule 20).

Part V (rules 21-24) makes provision for orders for expenses (rule 21), dealing with irregularities of procedure or mistakes in documents (rule 22), the proof of documents and decisions (rule 23) and the rules for delivering and receiving documents (rule 24).

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CHARITIES

The Scottish Charity Appeals Panel Rules 2006

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