



Charities Act 2006

2006 CHAPTER 50

PART 2

REGULATION OF CHARITIES

CHAPTER 9

CHARITY TRUSTEES ETC.

Liability of trustees etc.

38 Power of Commission to relieve trustees, auditors etc. from liability for breach of trust or duty

After section 73C of the 1993 Act (inserted by section 37 above) insert—

“73D Power to relieve trustees, auditors etc. from liability for breach of trust or duty

- (1) This section applies to a person who is or has been—
- (a) a charity trustee or trustee for a charity,
 - (b) a person appointed to audit a charity’s accounts (whether appointed under an enactment or otherwise), or
 - (c) an independent examiner, reporting accountant or other person appointed to examine or report on a charity’s accounts (whether appointed under an enactment or otherwise).
- (2) If the Commission considers—
- (a) that a person to whom this section applies is or may be personally liable for a breach of trust or breach of duty committed in his capacity as a person within paragraph (a), (b) or (c) of subsection (1) above, but

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- (b) that he has acted honestly and reasonably and ought fairly to be excused for the breach of trust or duty,
 the Commission may make an order relieving him wholly or partly from any such liability.
- (3) An order under subsection (2) above may grant the relief on such terms as the Commission thinks fit.
- (4) Subsection (2) does not apply in relation to any personal contractual liability of a charity trustee or trustee for a charity.
- (5) For the purposes of this section and section 73E below—
 - (a) subsection (1)(b) above is to be read as including a reference to the Auditor General for Wales acting as auditor under section 43B above, and
 - (b) subsection (1)(c) above is to be read as including a reference to the Auditor General for Wales acting as examiner under that section;
 and in subsection (1)(b) and (c) any reference to a charity's accounts is to be read as including any group accounts prepared by the charity trustees of a charity.
- (6) This section does not affect the operation of—
 - (a) section 61 of the Trustee Act 1925 (power of court to grant relief to trustees),
 - (b) section 727 of the Companies Act 1985 (power of court to grant relief to officers or auditors of companies), or
 - (c) section 73E below (which extends section 727 to auditors etc. of charities which are not companies).

73E Court's power to grant relief to apply to all auditors etc. of charities which are not companies

- (1) Section 727 of the Companies Act 1985 (power of court to grant relief to officers or auditors of companies) shall have effect in relation to a person to whom this section applies as it has effect in relation to a person employed as an auditor by a company.
- (2) This section applies to—
 - (a) a person acting in a capacity within section 73D(1)(b) or (c) above in a case where, apart from this section, section 727 would not apply in relation to him as a person so acting, and
 - (b) a charity trustee of a CIO.””

39 Trustees' indemnity insurance

After section 73E of the 1993 Act (inserted by section 38 above) insert—

“73F Trustees' indemnity insurance

- (1) The charity trustees of a charity may arrange for the purchase, out of the funds of the charity, of insurance designed to indemnify the charity trustees or any trustees for the charity against any personal liability in respect of—

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- (a) any breach of trust or breach of duty committed by them in their capacity as charity trustees or trustees for the charity, or
 - (b) any negligence, default, breach of duty or breach of trust committed by them in their capacity as directors or officers of the charity (if it is a body corporate) or of any body corporate carrying on any activities on behalf of the charity.
- (2) The terms of such insurance must, however, be so framed as to exclude the provision of any indemnity for a person in respect of—
 - (a) any liability incurred by him to pay—
 - (i) a fine imposed in criminal proceedings, or
 - (ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising);
 - (b) any liability incurred by him in defending any criminal proceedings in which he is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by him; or
 - (c) any liability incurred by him to the charity that arises out of any conduct which he knew (or must reasonably be assumed to have known) was not in the interests of the charity or in the case of which he did not care whether it was in the best interests of the charity or not.
- (3) For the purposes of subsection (2)(b) above—
 - (a) the reference to any such conviction is a reference to one that has become final;
 - (b) a conviction becomes final—
 - (i) if not appealed against, at the end of the period for bringing an appeal, or
 - (ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of; and
 - (c) an appeal is disposed of—
 - (i) if it is determined and the period for bringing any further appeal has ended, or
 - (ii) if it is abandoned or otherwise ceases to have effect.
- (4) The charity trustees of a charity may not purchase insurance under this section unless they decide that they are satisfied that it is in the best interests of the charity for them to do so.
- (5) The duty of care in section 1(1) of the Trustee Act 2000 applies to a charity trustee when making such a decision.
- (6) The Minister may by order make such amendments of subsections (2) and (3) above as he considers appropriate.
- (7) No order may be made under subsection (6) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (8) This section—
 - (a) does not authorise the purchase of any insurance whose purchase is expressly prohibited by the trusts of the charity, but

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- (b) has effect despite any provision prohibiting the charity trustees or trustees for the charity receiving any personal benefit out of the funds of the charity.”