



Charities (Regulation and Administration) (Scotland) Act 2023

2023 asp 5

PROSPECTIVE

Disqualification from being charity trustee etc.

4 Disqualification: offences

- (1) The 2005 Act is modified as follows.
- (2) In section 69 (disqualification from being charity trustee)—
 - (a) in subsection (2)(a)—
 - (i) before sub-paragraph (i) insert—

“(ai) an offence specified in [section 69A](#),”
 - (ii) in sub-paragraph (i), after “offence” insert “, not specified in [section 69A](#),”
 - (iii) sub-paragraph (ii) is repealed,
 - (b) in subsection (3), after “subsection (1)” insert “by reason of a conviction”.
- (3) After section 69, insert—

“69A Disqualification: specified offences

- (1) The following offences are specified for the purposes of section 69(2)(a)(ai)—
 - (a) an offence under this Act,
 - (b) an offence under section 77 of the Charities Act 2011 (offence of contravening certain orders),
 - (c) an offence under section 13 or 19 of the Terrorism Act 2000 (wearing of uniform etc, and failure to disclose information),
 - (d) an offence specified under section 41 or 42 of the Counter-Terrorism Act 2008 as an offence to which Part 4 of that Act applies,
 - (e) a money laundering offence within the meaning of section 415 of the Proceeds of Crime Act 2002,

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- (f) an offence under any of the following provisions of the Bribery Act 2010—
 - (i) section 1 (bribing another person),
 - (ii) section 2 (offences related to being bribed),
 - (iii) section 6 (bribery of foreign public officials),
 - (iv) section 7 (failure of commercial organisations to prevent bribery),
 - (g) an offence of perverting the course of justice (by whatever means and however the offence is described), including in particular—
 - (i) false accusation of a crime,
 - (ii) perjury,
 - (iii) prevarication on oath,
 - (iv) prison breaking,
 - (v) subornation of perjury,
 - (h) an offence of wilful neglect of duty by a public official,
 - (i) an offence, under the law of England and Wales, of misconduct in public office.
- (2) An offence which has been superseded (whether directly or indirectly) by any offence specified in [subsection \(1\)](#) is also specified for the purposes of section 69(2)(a)(ai).
- (3) In relation to an offence specified in [subsection \(1\)](#) or [\(2\)](#), the following offences are also specified for the purposes of section 69(2)(a)(ai)—
- (a) an offence committed by aiding, abetting, counselling, procuring or inciting the commission of the offence,
 - (b) an offence committed by attempting or conspiring to commit the offence.
- (4) The Scottish Ministers may by regulations modify this section to add or remove an offence.”.
- (4) In section 103(5) (orders, regulations and rules), after paragraph (ca) (as inserted by [section 5\(5\)](#)), insert—
- “(cb) regulations under section 69A(4)”.

Commencement Information

II S. 4 not in force at Royal Assent, see [s. 21\(2\)](#)

5 Disqualification: other cases

- (1) The 2005 Act is modified as follows.
- (2) In section 69(2) (disqualification from being charity trustee)—
- (a) in paragraph (b)—
 - (i) the words “an undischarged bankrupt,” become sub-paragraph (i),
 - (ii) in sub-paragraph (i) (as formed), after “bankrupt” insert “(see section 70(3))”,
 - (iii) after sub-paragraph (i), insert—

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- “(ii) subject to a specified bankruptcy-related measure (see section 70(4)),”
- (b) for paragraph (d) substitute—
- “(d) has been removed as a trustee, charity trustee, officer, agent or employee of a charity by a relevant order in England and Wales (see section 70(5)(a)),”
- (c) after paragraph (d), insert—
- “(da) has been removed from the office of charity trustee or trustee for a charity by a relevant order in Northern Ireland (see section 70(5)(b)),
- (db) is subject to an order made by the Charity Commission for England and Wales under section 181A of the Charities Act 2011 disqualifying the person in relation to all charities,”
- (d) after paragraph (e), insert—
- “(f) has been found to be in contempt of court by a court in England or Wales in civil proceedings for making a false disclosure statement, or making a false statement in a document verified by a statement of truth, or causing (in either case) such a statement to be made,
- (g) has been found guilty of disobedience to—
- (i) an order or direction of the Charity Commission for England and Wales on an application to the High Court of Justice in England and Wales under section 336(1) of the Charities Act 2011,
- (ii) an order of the Charity Commission for Northern Ireland on an application to the High Court of Justice in Northern Ireland under section 174 of the Charities Act (Northern Ireland) 2008,
- (h) is a designated person for the purposes of—
- (i) regulations 8 to 12 of the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/466),
- (ii) regulations 11 to 15 of the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/573),
- (iii) regulations 11 to 15 of the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/577),
- (i) is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.”
- (3) In section 69—
- (a) at the end of subsection (1), insert “(but see also subsection (2A))”,
- (b) after subsection (2), insert—
- “(2A) Where—
- (a) a person is subject to an order made by the Charity Commission for England and Wales under section 181A of the Charities Act 2011, and

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- (b) the order disqualifies the person in relation to a particular charity or type of charity,
the person is also disqualified from being a charity trustee in relation to that charity or type of charity.”,
 - (c) after subsection (3), insert—
 - “(3A) A person referred to in subsection (2)(f) is not disqualified under subsection (1) by reason of a finding of contempt which, if it had been a conviction for which the person was dealt with in the same way, would be a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974.”,
 - (d) in subsection (4), after “subsection (1)” insert “or (2A)”,
 - (e) after subsection (6), insert—
 - “(7) The Scottish Ministers may by regulations—
 - (a) modify this section so as to add or remove a person, or a description of a person, to or from the persons for the time being mentioned in or falling within this section as a person who is disqualified from being a charity trustee,
 - (b) modify the definitions in section 70 as Ministers consider appropriate in consequence of any modification of this section or otherwise.”.
- (4) In section 70 (disqualification: supplementary)—
- (a) in subsection (3), for “section 69(2)(b)” substitute “section 69(2)(b)(i)”,
 - (b) after subsection (3), insert—
 - “(4) For the purpose of section 69(2)(b)(ii), “specified bankruptcy-related measure” means—
 - (a) a bankruptcy restrictions order, interim order or undertaking under the Bankruptcy (Scotland) Act 2016, the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405),
 - (b) a debt relief restrictions order, interim order or undertaking under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405),
 - (c) a moratorium period under a debt relief order under either of those enactments.
- (5) For the purposes of section 69(2)(d) and (da), a “relevant order” is—
- (a) in England and Wales, an order made—
 - (i) by the Charity Commission for England and Wales under section 79(4) of the Charities Act 2011 or by the Commission or the Charity Commissioners for England and Wales under a relevant earlier enactment, or
 - (ii) by the High Court of Justice in England and Wales, on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible, or which the person knew of and failed to take any reasonable step to oppose, or which the person's conduct contributed to or facilitated,

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- (b) in Northern Ireland, an order made—
 - (i) by the Charity Commission for Northern Ireland under section 33(2)(i) of the Charities Act (Northern Ireland) 2008, or
 - (ii) by the High Court of Justice in Northern Ireland, on the grounds of any misconduct or mismanagement 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.

- (6) In subsection (5)(a), a “relevant earlier enactment” means—
 - (a) section 79(2)(a) of the Charities Act 2011 (as in force before the commencement of sections 4 and 9 of the Charities (Protection and Social Investment) Act 2016),
 - (b) section 18(2)(i) of the Charities Act 1993 (power to act for protection of charities),
 - (c) section 20(1A)(i) of the Charities Act 1960, or
 - (d) section 20(1)(i) of the 1960 Act (as in force before the commencement of section 8 of the Charities Act 1992).”.

- (5) In section 103(5) (orders, regulations and rules), after paragraph (c), insert—
 - “(ca) regulations under section 69(7)”.

Commencement Information

I2 S. 5 not in force at Royal Assent, see [s. 21\(2\)](#)

6 Disqualification: senior management functions

- (1) The 2005 Act is modified as follows.
- (2) After section 69A (inserted by [section 4\(3\)](#)), insert—

“69B Disqualification from holding office with senior management functions

- (1) While a person is disqualified by virtue of section 69 from acting as a charity trustee in relation to a charity, the person is also disqualified from holding an office or employment with senior management functions in the charity.
- (2) But where a person is disqualified by virtue of section 69 from acting as a charity trustee in relation to a charity by reason of an order made by the Charity Commission for England and Wales under section 181A of the Charities Act 2011, the person is not disqualified under subsection (1) to the extent that the order does not apply—
 - (a) in relation to holding an office or employment with senior management functions in a charity, or
 - (b) in relation to a particular office or employment or to any office or employment of a particular description.

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- (3) 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.
- (4) A waiver under subsection (3) may relate to a particular office or employment or to any office or employment of a particular description.
- (5) OSCR must notify a waiver under subsection (3) to the person concerned.
- (6) A function of an office or employment held by a person (“P”) is a senior management function if—
 - (a) it relates to the management of the charity, and P is not responsible for it to another officer or employee (other than a charity trustee), or
 - (b) it involves control over money and the only officer or employee (other than a charity trustee) to whom P is responsible for it is a person holding an office or employment with senior management functions other than ones involving control over money.”.
- (3) In section 70 (disqualification: supplementary)—
 - (a) in subsection (1), in the opening words after “69” insert “, or (as the case may be) holds an office or employment with senior management functions in the charity while disqualified by virtue of section 69B,”,
 - (b) for subsection (2) substitute—
 - “(2) Any acts done—
 - (a) as a charity trustee by a person disqualified by virtue of section 69 from being a charity trustee, or
 - (b) by a person holding an office or employment with senior management functions in a charity while disqualified by virtue of section 69B from holding such an office or employment in the charity,
 are not invalid by reason only of the disqualification.”.
- (4) The title of Chapter 9 becomes “Charity trustees and senior managers”.
- (5) In section 71 (decisions), after paragraph (p) insert—
 - “(pa) refuse to grant a waiver under section 69B(3),”.
- (6) In section 72(2)(a) (notice of decisions), for “or (p)” substitute “, (p), (pa)”.

Commencement Information

I3 S. 6 not in force at Royal Assent, see [s. 21\(2\)](#)

7 Record of persons removed from office

- (1) The 2005 Act is modified as follows.
- (2) In section 34(5)(ea) (powers of Court of Session)—
 - (a) for “purpose” substitute “purposes”,
 - (b) after “trustee” insert “and section 70ZA (record of persons removed from office)”.

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(3) After section 70, insert—

“70ZA Record of persons removed from office

- (1) OSCR must keep, in such manner as it thinks fit, a record of all persons who have been removed, by order of the Court of Session under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 or section 34 of this Act, from being concerned in the management or control of any body.
- (2) The record must contain a separate entry for each person entered in it setting out—
 - (a) the person’s name,
 - (b) the date of the order of the Court of Session removing the person from being concerned in the management or control of the body,
 - (c) the name of the body to which the order relates,
 - (d) if the person has been granted a waiver under section 69(4) in relation to a particular charity or type of charity only, or has been granted a waiver under section 69B(3), the details of the waiver including—
 - (i) the date OSCR notified the person of the waiver, and
 - (ii) the extent of the waiver, and
 - (e) any other information which OSCR considers appropriate in relation to—
 - (i) the person,
 - (ii) the body from which the person was removed.
- (3) Despite subsection (1)—
 - (a) OSCR must remove a person from the record if the person has been granted a general waiver under section 69(4),
 - (b) OSCR may remove a person from the record if the person has died.

70ZB Searching the record of removed persons

- (1) OSCR must provide a facility by which the record kept under section 70ZA(1) may be searched by any person.
 - (2) That search facility must allow the record to be searched by reference to, and only by reference to, a person’s name.
 - (3) Where, on an application being made to it, OSCR is satisfied that disclosing an entry in the record is likely to jeopardise the safety or security of any person or premises, OSCR must ensure that the entry is not disclosed to any person searching the record.
 - (4) OSCR may also determine other information which, though contained in the record, is not to be disclosed to any person searching it.”.
- (4) In section 71 (decisions), after paragraph (pb) (inserted by [section 9\(2\)](#)) insert—
“(pc) refuse an application made for the purposes of section 70ZB(3),”.
- (5) In section 72(2)(a) (notice of decisions), after “(pa)” (inserted by [section 6\(6\)](#)) insert
“or (pc)”.

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