



Charities (Regulation and Administration) (Scotland) Act 2023

2023 asp 5

Inquiries

15 Inquiries about former charities etc.

- (1) Section 28 (inquiries about charities etc.) of the 2005 Act is modified as follows.
- (2) In subsection (1), in paragraph (e), for the words from “which” to the end substitute “as a charity despite that body not being entered in the Register,”.
- (3) After subsection (2), insert—

“(2A) It does not matter whether a charity, body or person continues to fall within a paragraph of subsection (1), or continues to exist, for OSCR to be able to make inquiries under that subsection (but see subsection (4A)).”.
- (4) After subsection (4), insert—

“(4A) Where inquiries are made by virtue of subsection (2A) into a charity, body or person which no longer falls within a paragraph of subsection (1)—

 - (a) the inquiries must relate to the period or periods in which the charity, body or person fell within one or more paragraphs of subsection (1), and
 - (b) no direction may be given under subsection (3), unless the inquiries or, as the case may be, the direction relates to the application of protected charitable assets (see section 19).”.

16 Notice and obtaining information

- (1) The 2005 Act is modified as follows.
- (2) In section 29 (power of OSCR to obtain information for inquiries)—
 - (a) in subsection (1), the words “by notice” are repealed,
 - (b) in subsection (2), for the opening words substitute “Where OSCR makes such a requirement, it must give a notice to the person specifying—”,

- (c) after subsection (2), insert—
- “(2A) But OSCR must not give notice under subsection (2) unless and until the decision to make the requirement under subsection (1) has effect (see section 73(3)).”.
- (3) In section 72 (notice of decisions)—
- (a) in subsection (2)—
- (i) in paragraph (a)—
- (A) after “(k),” insert “(l),”,
- (B) after “the”, in second place where it occurs, insert “charity, body or”,
- (ii) after paragraph (b), insert—
- “(ba) in the case of a decision referred to in paragraph (h) of section 71, the charity, body or person with regard to which OSCR is making inquiries under section 28,”,
- (iii) in paragraph (c), for “that section” substitute “section 71”,
- (b) after subsection (3), insert—
- “(4) For the purposes of subsection (2)(ba)—
- (a) if OSCR is making inquiries into a body in relation to a period in which the body was a charity, the notice is to be given to the body as required by subsection (2)(ba), but
- (b) if the charity or (as the case may be) body to which notice is to be given has ceased to exist, the notice must be given, to the extent that it is reasonably practicable to do so—
- (i) in the case of a charity, to each person who was a charity trustee of the charity immediately before it ceased to exist,
- (ii) in the case of a body, to each person who appears to the person giving the notice to have been concerned in the management or control of the body immediately before it ceased to exist.”.
- (4) In section 73(3) (effect of decisions), in the opening words, for “the notice” substitute “any notice”.

17 Ability to issue positive directions

- (1) The 2005 Act is modified as follows.
- (2) In section 3(3)(e)(i) (Scottish Charity Register), after “30A(2)” (inserted by [section 18\(2\)](#)) insert “, 30B(2)”.
- (3) After section 30A (inserted by [section 18\(4\)](#)), insert—

“30B Powers of OSCR following inquiries: direction to take specified steps

- (1) This section applies where it appears to OSCR, as a result of inquiries under section 28—

- (a) that there has been misconduct in the administration of—
 - (i) a charity, or
 - (ii) a body controlled by a charity, or
 - (b) that it is necessary or desirable to act for the purpose of protecting the property of a charity or securing a proper application of such property for its purposes.
 - (2) OSCR may direct the charity or body to take, within such period as may be specified in the direction, such steps (specified in the direction) as OSCR considers to be expedient in the interests of the charity.
 - (3) The power of OSCR to give a direction under subsection (2) includes the power to—
 - (a) vary the direction, but only by—
 - (i) extending the time period specified in the direction,
 - (ii) removing steps which the charity or body is required to take,
 - (b) revoke the direction,
 - (c) give more than one direction under that subsection in respect of the same inquiries (in addition to any direction that may be given under section 31).
 - (4) A direction under subsection (2)—
 - (a) may require steps to be taken whether or not they would otherwise be within the powers exercisable by the charity or body, but
 - (b) may not require any steps to be taken which are—
 - (i) prohibited by any enactment,
 - (ii) expressly prohibited by the constitution of the charity or (as the case may be) body, or
 - (iii) inconsistent with the charity’s purposes.
 - (5) Anything done by a charity or body under the authority of a direction under subsection (2) is to be treated as properly done in the exercise of the powers exercisable by it.
 - (6) Subsection (5) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such a direction.”.
- (4) The heading of section 31 becomes “Powers of OSCR following inquiries: temporary suspension or restriction of conduct”.
- (5) In section 32(2) (suspensions and directions: procedure)—
 - (a) the words “a further suspension or direction may be made or given under section 31 but” become paragraph (a),
 - (b) in paragraph (a) (as formed), after “section 31” insert “(in addition to any direction that may be given under section 30B)”,
 - (c) the words from “the further suspension” to the end become paragraph (b),
 - (d) in paragraph (b) (as formed), after “direction” in the first place where it occurs, insert “under section 31”.
- (6) The heading of section 32 becomes “Suspensions and directions under section 31: procedure”.

- (7) In section 33(1)(a) (reports on inquiries), after sub-paragraph (ia) (inserted by [section 18\(5\)](#)) insert—
“(ib) gives a direction under section 30B.”.
- (8) In section 65(4) (designated religious charities), after “section 28(3),” insert—
“section 30B.”.
- (9) In section 71 (decisions), after paragraph (ic) (inserted by [section 18\(6\)](#)), insert—
“(id) give a direction under section 30B(2),”.
- (10) In section 72(2)(a) (notice of decisions), after “(g),” insert “(id),”.
- (11) In section 73(2) (effect of decisions), in the opening words, after “(ic),” (inserted by [section 18\(7\)](#)) insert “(id),”.