



Charities (Regulation and Administration) (Scotland) Act 2023

2023 asp 5

Disqualification from being charity trustee etc.

PROSPECTIVE

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—
 - “(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

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- 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
 - (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,

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- (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,
 - (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

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(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

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

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