

PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 9 - Charities

Section 120 – Information to appear on charity websites

324. This section amends the Charities and Trustee Investment (Scotland) Act 2005 (the ‘2005 Act’) to include websites and webpages within the scope of the regulation-making powers in sections 15 and 52 of the 2005 Act.
325. New sections 15(3) and 52(5) of the 2005 Act provide that a charity, including a Scottish Charitable Incorporated Organisation (SCIO), which has a website, either operated directly or on its behalf, may be required to include information relating to its charitable status on such webpages as are specified in regulations.
326. Section 15 of the 2005 Act introduced a requirement for a charity to include a statement that it is a charity, and such other information specified in regulations, on such documents as may be specified in regulations. The information which must be included and the documents on which it must be included are specified in the Charities References in Documents (Scotland) Regulations 2007, as amended.
327. Section 52 of the 2005 Act introduces a requirement for a SCIO to state that it is a SCIO on documents issued or signed by, or on behalf of, the SCIO. Regulations will set out the documents to which the requirement will apply.

Section 121 - Variation, revocation and review of directions

328. This section allows a charity to request a review of a decision by Office of the Scottish Charity Regulator (OSCR) to issue it with a direction under section 30(1)(a) of the 2005 Act requiring it to take steps to meet the charity test. The section also allows OSCR to vary or revoke a direction – either on its own volition or at the request of the charity – after it has been issued. This may be used to take account of new information or a change in circumstances.
329. New section 71(ia) of the 2005 Act introduces a right of review of OSCR’s decision to issue a charity a direction under section 30(1)(a) of the 2005 Act where it appears to it not to meet the charity test. This allows the charity to request a review of the decision – something which the legislation did not previously allow. As consequentially amended, section 73(2) prevents the direction issued under section 30 from having any effect until such time as any review and/or appeal – if requested – has been concluded.

Section 122 - Powers of Court of Session: deemed removal of persons

330. This section introduces a new section 34(5)(ea) to the 2005 Act to provide that the Court of Session may make an order which has the effect of deeming a person to be

*These notes relate to the Public Services Reform (Scotland) Act
2010 (asp 8) which received Royal Assent on 28 April 2010*

removed from the management or control of a charity or body, even if that person is no longer involved with the management or control of the charity or body, the charity or body has ceased to exist, the body is no longer a charity or the body is not longer controlled by a charity.

331. The effect of this order is that the person in respect of whom it was made is disqualified, under section 69 of the 2005 Act, from acting as a charity trustee in the future.

Section 123 - Delegation of functions

332. This section delegates the power provided by section 126 to the Scottish Ministers, in respect of Registered Social Landlords.

Section 124 - Reorganisation of charities

333. This section amends the 2005 Act to allow OSCR to approve a charity reorganisation scheme where the charity is proposing to insert a new administrative provision to its constitution, and the new amendment will enable the charity to be administered more effectively.
334. The new sections 39(1A) and 40(2A) of the 2005 Act prevent OSCR and the Court of Session approving a scheme where the inserted clause allows the charity to change its purposes beyond the spirit of its constitution.

Section 125 - Reorganisation of restricted funds

335. This section introduces a new Chapter 5A to the 2005 Act, which makes provision for OSCR to approve the reorganisation of restricted funds held by a charity. The new section 43A(1) sets out the criteria that must be met for OSCR to be able to approve a restricted fund reorganisation, while subsection (2) sets out what the conditions referred to in paragraph (a)(i) are, at least one which must be satisfied in order for OSCR to be able to approve a reorganisation scheme.
336. Subsection (3) gives the Scottish Ministers the power to make regulations setting out further details in relation to the application process. Subsection (4) sets out examples of what those regulations may provide, including publication requirements and the timescale within which OSCR must make a decision. Subsection (4)(d) makes clear that the regulations may make further provision relating to the action which a charity applying for a reorganisation may take to satisfy OSCR that it has been unable to ascertain the wishes of the donor.
337. Section 43B allows OSCR, either of its own accord or on the application of a charity, to apply to the Court of Session for approval of a restricted fund reorganisation scheme. Subsection (1) sets out the conditions that OSCR must be satisfied of in order for it to make such an application. Subsection (5) provides the Scottish Ministers with a power to make regulations setting out the action OSCR may take to satisfy itself in relation to seeking the views of the donor. Subsection (6) adds a clarification that this does not affect the Court's ability to consider, and approve, a *cy pres* scheme in relation to a charity.
338. Section 43C provides that an approved restricted fund reorganisation scheme allows the funds to be used in a manner permitted by that scheme, despite any contrary provision.
339. Section 43D provides definitions of terms used in the Chapter, and adds the refusal of an application under the chapter to the decisions which can be reviewed and appealed.

Section 126 - Appointment of charity trustees

340. New section 70A makes provision for OSCR to appoint charity trustees. Section 70A(1) sets out the conditions which must apply for OSCR to be able to act, i.e. that a charity has an insufficient number of charity trustees to be able to appoint a charity trustee

under its constitution and that charity's constitution does not provide a mechanism to appoint a charity trustee in those circumstances. Section 70A(2) sets out who may request that OSCR act, while subsection (3) makes clear that OSCR may only make as many appointments as is necessary to enable the charity to appoint further charity trustees itself. Subsection (4) makes clear that the appointment of a charity trustee in this manner is for a time limited period of no more than 12 months and that the appointed charity trustee has the same functions as a charity trustee appointed under the charity's constitution. This includes the charity trustee duties set out in section 66 of the 2005 Act.

341. Subsection (5) allows the appointed charity trustee's term of appointment to be extended by one period of up to 3 months where OSCR, the charity trustees and the acting charity trustee agree. This is to allow further time for any necessary amendments to be made to the constitution to prevent the situation occurring in the future, in the event that the changes have not been completed within the initial 12 month period.
342. Subsection (6) allows the acting charity trustee to be appointed as a charity trustee under the charity's constitution at any time during the period in which they are an acting charity trustee. Subsection (7) prevents an acting charity trustee voting on their own appointment as a charity trustee in order to avoid any conflict of interest, while subsection (8) makes clear that a person's appointment as an acting charity trustee ends if they are appointed as a charity trustee under the charity's constitution.

Section 127 – Charity trustees' indemnity insurance

343. This section inserts section 68A into the Charities and Trustee Investment (Scotland) Act 2005.
344. Section 68A(1) allows charity trustees to purchase, from charity funds, indemnity insurance against personal liability in their role as charity trustee or as directors or officers of any body corporate carrying on any activities on behalf of the charity.
345. Sections 68A(2) and (3) set out certain types of liability that must be excluded from the provision of any indemnity, for example liability incurred by a trustee to pay a fine imposed in criminal proceedings.
346. Section 68A(4) clarifies that this provision does not allow the purchase of insurance if it is expressly prohibited by the charity's constitution and clarifies that indemnity insurance can be provided despite any provision prohibiting the charity trustees receiving any personal benefit from charity funds.