



2008 CHAPTER 12

PART 9

CHARITY TRUSTEES

CHAPTER 2

OTHER PROVISIONS RELATING TO CHARITY TRUSTEES

**Persons disqualified for being trustees of a charity**

**86.—(1)** Subject to the following provisions of this section, a person (D) shall be disqualified for being a charity trustee or trustee for a charity if—

- (a) D has been convicted of any offence involving dishonesty or deception;
- (b) D has been adjudged bankrupt or sequestration of D's estate has been awarded and (in either case) D has not been discharged;
- (c) D has made a composition or arrangement with, or granted a trust deed for, creditors and has not been discharged in respect of it;
- (d) D has been removed from the office of charity trustee or trustee for a charity by an order made—
  - (i) by the Commission under section 33(2)(i), or
  - (ii) by the Court,

on the grounds of any misconduct or mismanagement in the administration of the charity for which D was responsible or to which D was privy, or which D by conduct contributed to or facilitated;

- (e) D has been removed from the office of charity trustee or trustee of a charity by an order made—

- (i) by the Charity Commission for England and Wales under section 18(2)(i) of the Charities Act 1993 (c. 10), or
  - (ii) by the Charity Commissioners for England and Wales under that provision (as in force before the commencement of section 6 of the Charities Act 2006 (c. 50)), under section 20(1A)(i) of the Charities Act 1960 (c. 58) or under section 20(1)(i) of that Act (as in force before the commencement of section 8 of the Charities Act 1992 (c. 41), or
  - (iii) by Her Majesty's High Court of Justice in England;  
on the grounds of any misconduct or mismanagement in the administration of the charity for which D was responsible or to which D was privy, or which D by conduct contributed to or facilitated;
  - (f) D has been removed, under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) or under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) (powers of Court of Session to deal with management of charities), from being concerned in the management or control of any body;
  - (g) D is subject to a disqualification order or a disqualification undertaking under the [Company Directors Disqualification \(Northern Ireland\) Order 2002 \(NI 4\)](#) or the [Company Directors Disqualification Act 1986 \(c. 46\)](#).
- (2) In subsection (1)—
- (a) paragraph (a) applies whether the conviction occurred before or after the commencement of that subsection, but does not apply in relation to any conviction which is a spent conviction for the purposes of the [Rehabilitation of Offenders \(Northern Ireland\) Order 1978 \(NI 27\)](#);
  - (b) paragraph (b) applies whether the adjudication of bankruptcy or the sequestration occurred before or after the commencement of that subsection;
  - (c) paragraph (c) applies whether the composition or arrangement was made, or the trust deed was granted, before or after the commencement of that subsection; and
  - (d) paragraphs (d) to (g) apply in relation to orders made and removals effected before or after the commencement of that subsection.
- (3) Where (apart from this subsection) D is disqualified under subsection (1) (b) for being a charity trustee or trustee for any charity which is a company, D shall not be so disqualified if leave has been granted under Article 15 of the [Company Directors Disqualification \(Northern Ireland\) Order 2002 \(NI 4\)](#) or section 11 of the [Company Directors Disqualification Act 1986 \(c. 46\)](#) (undischarged bankrupts) for D to act as director of the charity; and similarly

D shall not be disqualified under subsection (1)(g) for being a charity trustee or trustee for such a charity if—

- (a) in the case where D is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002, leave for the purpose of Article 3(1)(a) or 4(1)(a) of that Order has been granted for D to act as director of the charity,
- (b) in the case where D is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986, leave for the purpose of section 1(1)(a) or 1A(1)(a) of that Act has been granted for D to act as a director of the charity.

(4) The Commission may, on the application by D, waive D's disqualification either generally or in relation to a particular charity or a particular class of charities; but no such waiver may be granted in relation to any charity which is a company if—

- (a) D is for the time being prohibited, by virtue of—
  - (i) a disqualification order or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002, or
  - (ii) Article 15(1), 16(2) or 17 of that Order (undischarged bankrupts; failure to pay under administration order, etc.),
 from acting as director of the charity; and
- (b) leave has not been granted for D to act as director of any other company.

(5) If—

- (a) D is disqualified under subsection (1)(d), (e) or (f) and makes an application under subsection (4) five years or more after the date on which D's disqualification took effect, and
- (b) the Commission is not prevented from granting the application by virtue of paragraphs (a) and (b) of subsection (4),

the Commission must grant the application unless satisfied that, by reason of any special circumstances, it should be refused.

(6) Any waiver under subsection (4) shall be notified in writing to D.

(7) For the purposes of this section the Commission shall keep, in such manner as it thinks fit, a register of all persons who have been removed from office as mentioned in subsection (1)(d) either—

- (a) by an order of the Commission, or
- (b) by an order of the Court;

and, where any person is so removed from office by an order of the Court, the Court shall notify the Commission of the removal.

(8) The entries in the register kept under subsection (7) shall be available for public inspection in legible form at all reasonable times.

#### **Person acting as charity trustee while disqualified**

**87.**—(1) Subject to subsection (2), any person who acts as a charity trustee or trustee for a charity while disqualified for being such a trustee by virtue of section 86 is guilty of an offence and liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

(2) Subsection (1) shall not apply where—

- (a) the charity concerned is a company; and
- (b) the disqualified person is disqualified by virtue only of paragraph (b) or (g) of section 86(1).

(3) Any acts done as charity trustee or trustee for a charity by a person disqualified for being such a trustee by virtue of section 86 shall not be invalid by reason only of that disqualification.

(4) Where the Commission is satisfied that any person—

- (a) has acted as charity trustee or trustee for a charity while disqualified for being such a trustee by virtue of section 86, and
- (b) has, while so acting, received from the charity any sums by way of remuneration or expenses, or any benefit in kind, in connection with acting as charity trustee or trustee for the charity,

the Commission may by order direct that person to repay to the charity the whole or part of any such sums, or (as the case may be) to pay to the charity the whole or part of the monetary value (as determined by the Commission) of any such benefit.

(5) Subsection (4) does not apply to any sums received by way of remuneration or expenses in respect of any time when the person concerned was not disqualified for being a charity trustee or trustee for the charity.

#### **Remuneration of trustees, etc. providing services to charity**

**88.**—(1) This section applies to remuneration for services provided to or on behalf of a charity by a person—

- (a) who is a charity trustee or trustee for the charity, or
- (b) who is connected with a charity trustee or trustee for the charity and the remuneration might result in that trustee obtaining any benefit.

This is subject to subsection (7).

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(2) If conditions A to D are met in relation to remuneration within subsection (1), the person providing the services (“the relevant person”) is entitled to receive the remuneration out of the funds of the charity.

(3) Condition A is that the amount or maximum amount of the remuneration—

(a) is set out in an agreement in writing between—

(i) the charity or its charity trustees (as the case may be), and

(ii) the relevant person,

under which the relevant person is to provide the services in question to or on behalf of the charity, and

(b) does not exceed what is reasonable in the circumstances for the provision by that person of the services in question.

(4) Condition B is that, before entering into that agreement, the charity trustees decided that they were satisfied that it would be in the best interests of the charity for the services to be provided by the relevant person to or on behalf of the charity for the amount or maximum amount of remuneration set out in the agreement.

(5) Condition C is that if immediately after the agreement is entered into there is, in the case of the charity, more than one person who is a charity trustee and is—

(a) a person in respect of whom an agreement within subsection (3) is in force, or

(b) a person who is entitled to receive remuneration out of the funds of the charity otherwise than by virtue of such an agreement, or

(c) a person connected with a person falling within paragraph (a) or (b),

the total number of them constitute a minority of the persons for the time being holding office as charity trustees of the charity.

(6) Condition D is that the trusts of the charity do not contain any express provision that prohibits the relevant person from receiving the remuneration.

(7) Nothing in this section applies to—

(a) any remuneration for services provided by a person in the capacity of a charity trustee or trustee for a charity or under a contract of employment, or

(b) any remuneration not within paragraph (a) which a person is entitled to receive out of the funds of a charity by virtue of any provision or order within subsection (8).

(8) The provisions or orders within this subsection are—

(a) any provision contained in the trusts of the charity,

(b) any order of the Court or the Commission,

- (c) any statutory provision other than this section.
- (9) Section 89 applies for the purposes of this section.

### **Supplementary provisions for purposes of section 88**

**89.—**(1) Before entering into an agreement within section 88(3) the charity trustees must have regard to any guidance given by the Commission concerning the making of such agreements.

(2) The duty of care in section 1(1) of the Trustee Act (Northern Ireland) 2001 (c. 14) applies to a charity trustee when making such a decision as is mentioned in section 88(4).

(3) For the purposes of section 88(5) an agreement within section 88(3) is in force so long as any obligations under the agreement have not been fully discharged by a party to it.

(4) In section 88—

“benefit” means a direct or indirect benefit of any nature;

“maximum amount”, in relation to remuneration, means the maximum amount of the remuneration whether specified in or ascertainable under the terms of the agreement in question;

“remuneration” includes any benefit in kind (and “amount” accordingly includes monetary value);

“services”, in the context of remuneration for services, includes goods that are supplied in connection with the provision of services.

(5) For the purposes of section 88 the following persons are “connected” with a charity trustee or trustee for a charity—

- (a) a child, parent, grandchild, grandparent, brother or sister of the trustee;
- (b) the spouse or civil partner of the trustee or of any person falling within paragraph (a);
- (c) a person carrying on business in partnership with the trustee or with any person falling within paragraph (a) or (b);
- (d) an institution which is controlled—
  - (i) by the trustee or by any person falling within paragraph (a), (b) or (c), or
  - (ii) by two or more persons falling within sub-paragraph (i) when taken together;
- (e) a body corporate in which—
  - (i) the trustee or any connected person falling within any of paragraphs (a) to (c) has a substantial interest, or

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(ii) two or more persons falling within sub-paragraph (i), when taken together, have a substantial interest.

(6) Paragraphs 2 to 4 of Schedule 5 apply for the purposes of subsection (5) as they apply for the purposes of provisions of that Schedule.

### **Disqualification of trustee receiving remuneration under section 88**

**90.**—(1) This section applies to any charity trustee or trustee for a charity—

- (a) who is or would be entitled to remuneration under an agreement or proposed agreement within section 88(3), or
- (b) who is connected with a person who is or would be so entitled.

(2) The charity trustee or trustee for a charity is disqualified from acting as such in relation to any decision or other matter connected with the agreement.

(3) But any act done by a person who is disqualified from doing it by virtue of subsection (2) shall not be invalid by reason only of that disqualification.

(4) Where the Commission is satisfied—

- (a) that a person (“the disqualified trustee”) who was disqualified from doing any act by virtue of subsection (2) has done that act, and
- (b) that the disqualified trustee or a person connected with the disqualified trustee has received or is to receive from the charity any remuneration under the agreement in question,

it may make an order under subsection (5) or (6) (as appropriate).

(5) An order under this subsection is one requiring the disqualified trustee—

- (a) to reimburse to the charity the whole or part of the remuneration received as mentioned in subsection (4)(b);
- (b) to the extent that the remuneration consists of a benefit in kind, to reimburse to the charity the whole or part of the monetary value (as determined by the Commission) of the benefit in kind.

(6) An order under this subsection is one directing that the disqualified trustee or (as the case may be) connected person is not to be paid the whole or part of the remuneration mentioned in subsection (4)(b).

(7) If the Commission makes an order under subsection (5) or (6), the disqualified trustee or (as the case may be) connected person accordingly ceases to have any entitlement under the agreement to so much of the remuneration (or its monetary value) as the order requires to be reimbursed to the charity or (as the case may be) as it directs is not to be paid to the disqualified trustee or connected person.

(8) Subsections (4) to (6) of section 89 apply for the purposes of this section as they apply for the purposes of section 88.

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

- 91.**—(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 a statutory provision 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 a statutory provision 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 the capacity of a person within paragraph (a), (b) or (c) of subsection (1), but
  - (b) that the person 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 that person wholly or partly from any such liability.
- (3) An order under subsection (2) 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) 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 (Northern Ireland) 1958 (c. 23) (power of court to grant relief to trustees),
  - (b) section 1157 of the Companies Act 2006 (c. 46) (power of court to grant relief to officers or auditors of companies), or
  - (c) section 92(2) (which extends section 1157 to auditors, etc. of charities which are not companies).

**Court’s power to grant relief to apply to all auditors, etc. of charities which are not companies**

- 92.**—(1) Section 1157 of the Companies Act 2006 (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 auditor by a company.
- (2) This section applies to—

- (a) a person acting in a capacity within section 91(1)(b) or (c) in a case where, apart from this section, section 1157 of the Companies Act 2006 would not apply to that person as a person so acting, and
- (b) a charity trustee of a CIO.

### **Trustees' indemnity insurance**

**93.—**(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—

- (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 that person to pay—
  - (i) a fine imposed in criminal proceedings, or
  - (ii) a sum payable to a regulator 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 that person in defending any criminal proceedings in which that person is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by that person; or
- (c) any liability incurred by that person to the charity that arises out of any conduct which that person knew (or must reasonably be assumed to have known) was not in the interest of the charity or in the case of which that person did not care whether it was in the best interests of the charity or not.

(3) For the purposes of subsection (2)(b)—

- (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 (Northern Ireland) 2001 (c. 14) applies to a charity trustee when making such a decision.
- (6) The Department may by order make such amendments of subsections (2) and (3) as it considers appropriate.
- (7) No order may be made under subsection (6) unless a draft of the order has been laid before and approved by a resolution of the Assembly.
- (8) This section—
- (a) does not authorise the purchase of any insurance whose purchase is expressly prohibited by the trusts of the charity, but
  - (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.

## **Trustees**

**94.**—(1) The Trustee Act (Northern Ireland) 2001 (c. 14) shall be amended as follows.

- (2) In section 17 (power to appoint custodians), after subsection (3) add—

“(4) This section does not apply in relation to any assets vested in the official custodian for charities.”
- (3) In section 18 (investment in bearer securities), after subsection (3) add—

“(4) This section does not apply in relation to any assets vested in the official custodian for charities.”
- (4) For section 41 (common investment schemes) substitute—

### **“41 Common investment schemes for charities, etc.**

- 41.** Parts 2 to 4 do not apply to—
- (a) trustees managing a fund under a common investment scheme made, or having effect as if made, under section 43 of the Charities Act (Northern Ireland) 2008, other than such a fund the trusts of which provide that property is not to be transferred to the fund except by or on behalf of a charity the trustees of which are trustees appointed to manage the fund, or

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- (b) trustees managing a fund under a common deposit scheme made, or having effect as if made under section 44 of that Act.”.