



# Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

## 1990 CHAPTER 40

### PART I

#### CHARITIES

##### *Charities accounts*

#### **4 Duty to keep accounting records**

- (1) The persons concerned in the management or control of every recognised body shall ensure that there are kept in respect of the body, accounting records which are sufficient to show and explain the body's transactions and which are such as to—
  - (a) disclose with reasonable accuracy, at any time, the financial position of the body at that time; and
  - (b) enable them to ensure that any statement of accounts prepared under section 5 of this Act complies with the requirements of that section.
- (2) The accounting records shall in particular contain—
  - (a) entries showing from day to day all sums of money received and expended by the body, and the matters in respect of which the receipt and expenditure takes place; and
  - (b) a record of the assets and liabilities of the body.
- (3) The accounting records which are required by this section to be kept in respect of a recognised body shall be preserved, without prejudice to any requirement of any other enactment or rule of law, for six years from the date on which they are made.
- (4) The Secretary of State may, by regulations—
  - (a) prescribe requirements as to the places where and the persons by whom the accounting records of recognised bodies, including bodies which have been wound up or have ceased to be active, are to be kept; and

- (b) provide that such class or classes of recognised body as may be prescribed shall be exempt from such requirements of this section and section 5 of this Act as may be prescribed.

## **5 Annual accounts and report**

- (1) The persons concerned in the management or control of every recognised body shall ensure that, in respect of each financial year of the body, there is prepared a statement of accounts.
- (2) Subject to subsection (3) below, the statement of accounts of every recognised body shall comprise—
  - (a) a balance sheet as at the last day of the year;
  - (b) an income and expenditure account; and
  - (c) a report as to the activities of the body, having regard to its charitable purposes.
- (3) As regards such class or classes of recognised body as the Secretary of State may, by regulations, prescribe a recognised body may elect that in respect of any financial year its statement of accounts shall, instead of the requirements of subsection (2) above, comprise—
  - (a) a statement of balances as at the last day of the year;
  - (b) a receipts and payments account; and
  - (c) a report as to the activities of the body, having regard to its charitable purposes.
- (4) The balance sheet shall give a true and fair view of the state of affairs of the body as at the end of the financial year; and the income and expenditure account shall give a true and fair view of the surplus or deficit of the body for the financial year.
- (5) The Secretary of State may, by regulations, prescribe—
  - (a) the form and content of the statement of accounts;
  - (b) any additional information to be provided by way of notes to the accounts; and
  - (c) such requirements as to auditing of the balance sheet, statement of balances, income and expenditure account and receipts and payments account and any notes thereon and as to the consideration of the report as he considers appropriate,and different provision may be prescribed for different bodies or classes of bodies.
- (6) The Lord Advocate may require any recognised body to furnish him, without payment therefor, with a copy of its statement of accounts.
- (7) Every such body shall—
  - (a) make available to any person who requests it, on payment of such reasonable charge in respect of copying and postage as the body may stipulate, a copy of its most recent statement of accounts;
  - (b) inform any person who requests it of its accounting reference date.
- (8) Where any recognised body fails, within 10 months, or such longer period as the Lord Advocate may allow, after the end of a financial year, to have prepared a statement of accounts, the Lord Advocate may require that such fact shall be noted for the purposes of section 1(3) of this Act.
- (9) Where a body has failed to have prepared a statement of accounts as mentioned in subsection (8) above, the Lord Advocate may require the persons concerned in the

management or control of the body to have prepared a statement of accounts, by such date as he may require.

(10) In any case where the statement of accounts has not been prepared by the date specified under subsection (9) above, the Lord Advocate may appoint a suitably qualified person to prepare a balance sheet and income and expenditure account or, in the case of a body which belongs to a class to which subsection (3) above applies if it appears to such person more appropriate to do so, a statement of balances and receipts and payments account; and a person so appointed shall be entitled, for that purpose—

- (a) on giving prior notice in writing, to enter, at all reasonable times, the premises of the body;
- (b) to take possession of any document appearing to him to relate to the financial affairs of the body;
- (c) to require any person concerned in the management or control of the body to give him such information as he may reasonably require relating to the activities of the body,

and the persons concerned in the management or control of the body shall be personally liable jointly and severally for the expenses incurred in the performance of his functions under this section by any person so appointed.

(11) A person appointed under subsection (10) above shall make a report to the Lord Advocate as to the affairs and accounting records of the body and shall send a copy of the report to any person appearing to him to be concerned in the management and control of the body.

(12) Where any such body, within one month of its being requested to do so by any person—

- (a) fails to provide to that person a copy of its most recent statement of accounts as mentioned in subsection (7) above; or
- (b) fails to inform that person of its accounting reference date,

the Lord Advocate, on a complaint being made to him by such person, may direct that the fact of such failure shall be noted for the purposes of section 1(3) of this Act.

(13) Where in the case of any recognised body, there has been a failure such as is mentioned in subsection (9) or (12) above the court may, on an application being made by the Lord Advocate, interdict the body and any person concerned in its management or control from engaging in any activity specified in the application until the Lord Advocate intimates to the court that he is satisfied that the failure has been rectified.

(14) Section 4 of this Act and subsections (1), (2), (3), (4), (5), (8), (9), (10) and (11) and, so far as it relates to a failure such as is mentioned in the said subsection (9), subsection (13) of this section shall not apply to any recognised body which is —

- (a) a company within the meaning of section 735 of the Companies Act 1985; or
- (b) an unregistered company to which Part VII of that Act (accounts and audit) applies by virtue of section 718 of that Act,

and, in the application of the remainder of this section to such a body, references to its income and expenditure account and its report shall be construed as references to its profit and loss account and its directors' report.