

CHARITIES ACT 2006

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Section 36: Remuneration of trustees etc. providing services to charity

152. A trustee (including the director of a charitable company) may not directly or indirectly receive any remuneration, or other form of valuable benefit, from his charity without authority. Currently authority for a trustee's remuneration can come from either:
- a provision in the charity's governing instrument; or
 - an order made by the Charity Commission (under section 26 of the Charities Act 1993) or by the court; or
 - statutory provision (e.g. Schedule. 1 to the Housing Act 1996, which allows for the remuneration of charity trustees of some charitable housing associations in some circumstances).
153. This section inserts two new sections, 73A and 73B, into the 1993 Act. Section 73A provides a statutory power for the trustee body to pay remuneration to a person who either is a trustee of the charity or is connected (as defined in section 73B(5)) with a trustee of the charity who might receive a benefit as a result of the connected person's remuneration. An example of a connected person's remuneration benefiting a trustee is where persons A and B are spouses with joint finances, person A is a trustee of a charity, and person B receives remuneration from that charity. Section 73A also provides safeguards to prevent misuse of this power.
154. *Subsections (2) to (6)* set out the conditions that need to be met for remuneration to be payable under this section.
155. *Subsection (7)* provides that this section does not apply to remuneration for services provided by a person acting in the capacity of trustee, nor under a contract of employment. Neither does this section apply to any other remuneration to which a person is entitled specified in the provisions and orders that are set out in *subsection (8)*.
156. New section 73(B)(2) and (3) contains two safeguards to prevent misuse of the power: the duty to have regard to Charity Commission guidance, and the requirement to act in accordance with the duty of care set out in section 1(1) of the Trustee Act 2000.