



Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

^{F1}PART 1 **S**

CHARITIES

CHAPTER 9 **S**

CHARITY TRUSTEES

Remuneration

67 **Remuneration for services** **S**

- (1) A charity trustee may not be remunerated for services provided to the charity (including services provided in the capacity as a charity trustee or under a contract of employment) unless subsection (2) entitles the trustee to be so remunerated.
- (2) Where a charity trustee of a charity—
 - (a) provides services to or on behalf of the charity, or
 - (b) might benefit from any remuneration for the provision of such services by a person with whom the trustee is connected,the person providing the services (the “service provider”) is entitled to be remunerated from the charity's funds for doing so only if the conditions set out in subsection (3) are met.
- (3) Those conditions are—
 - (a) that the maximum amount of the remuneration—
 - (i) is set out in a written agreement between the service provider and the charity (or, as the case may be, its charity trustees) under which the service provider is to provide the services in question, and
 - (ii) is reasonable in the circumstances,

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- (b) that, before entering into the agreement, the charity trustees were satisfied that it would be in the interests of the charity for those services to be provided by the service provider for that maximum amount,
 - (c) that, immediately after entering into the agreement, less than half of the total number of charity trustees of the charity fall within subsection (4), and
 - (d) that the charity's constitution does not contain any provision which expressly prohibits the service provider from receiving the remuneration.
- (4) A charity trustee falls within this subsection if the trustee is—
- (a) party (in the capacity of a service provider) to a written agreement of the type described in subsection (3)(a)(i) under which any obligation is still to be fully discharged,
 - (b) entitled to receive remuneration from the charity's funds otherwise than by virtue of such an agreement, or
 - (c) connected with any other charity trustee who falls within sub-paragraph (a) or (b).
- (5) Nothing in subsections (1) or (2) prevents a charity trustee or other service provider from receiving any remuneration from a charity's funds which that service provider is entitled to receive by virtue of—
- (a) any authorising provision of the charity's constitution which was in force on 15 November 2004,
 - (b) an order made by the Court of Session, or
 - (c) [F1this Act or any other] enactment.
- (6) For the purposes of subsection (5)(a), an “authorising provision” is a provision which refers specifically to the payment of remuneration—
- (a) to the service provider concerned,
 - (b) where that service provider is a charity trustee, to a charity trustee, or
 - (c) where that service provider is connected to a charity trustee, to any person so connected.
- (7) Where a charity trustee or other service provider is remunerated in contravention of this section, the charity may recover the amount of remuneration; and proceedings for its recovery must be taken if OSCR so directs.

Textual Amendments

- F1** Words in s. 67(5)(c) substituted (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 127(1), 134(7)**; [S.S.I. 2010/221](#), **art. 3(2)**, **Sch.**

Commencement Information

- II** S. 67 in force at 1.4.2006 by [S.S.I. 2006/189](#), **art. 2(1)**, **Sch. Pt. 1**

68 Remuneration: supplementary **S**

- (1) In section 67—
- “benefit” means any direct or indirect benefit,
 - “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,

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“remuneration” includes any benefit in kind (and “remunerated” is to be construed accordingly),

“services” includes goods that are supplied in connection with the provision of services.

(2) For the purposes of that section, the following persons are “connected” with a charity trustee—

- (a) any person—
 - (i) to whom the trustee is married,
 - (ii) who is the civil partner of the trustee, or
 - (iii) with whom the trustee is living as husband and wife or, where the trustee and the other person are of the same sex, in an equivalent relationship,
- (b) any child, parent, grandchild, grandparent, brother or sister of the trustee (and any spouse of any such person),
- (c) any institution which is controlled (whether directly or through one or more nominees) by—
 - (i) the charity trustee,
 - (ii) any person with whom the charity trustee is connected by virtue of paragraph (a), (b), (d) or (e), or
 - (iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together,
- (d) a body corporate in which—
 - (i) the charity trustee has a substantial interest,
 - (ii) any person with whom the charity trustee is connected by virtue of paragraph (a), (b), (c) or (e) has a substantial interest, or
 - (iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together, have a substantial interest,
- (e) a Scottish partnership in which one or more of the partners is—
 - (i) the charity trustee, or
 - (ii) a person with whom the charity trustee is, by virtue of paragraph (a) or (b), connected.

(3) For the purposes of subsection (2) a person who is—

- (a) another person's stepchild, or
- (b) brought up or treated by another person as if the person were a child of the other person,

is to be treated as that other person's child.

(4) Section 105 sets out when a person is to be treated as being in control of an institution or as having a substantial interest in a body corporate.

Commencement Information

I2 S. 68 in force at 1.4.2006 by [S.S.I. 2006/189](#), art. 2(1), [Sch. Pt. 1](#)

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[^{F2}68A Charity trustees' indemnity insurance **S**

- (1) The charity trustees of a charity may arrange for the purchase, from the charity's funds, of insurance designed to indemnify the charity trustees against personal liability in respect of any negligence, default or breach of duty committed by them in their capacity as—
 - (a) charity trustees, or
 - (b) directors or officers of any body corporate carrying on any activities on behalf of the charity.
- (2) The terms of such insurance must, however, be framed to exclude the provision of any indemnity for a charity trustee in respect of any liability incurred by the charity trustee—
 - (a) to pay—
 - (i) a fine imposed in criminal proceedings,
 - (ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature,
 - (b) in respect of representation in any criminal proceedings in which the charity trustee is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by the charity trustee,
 - (c) to the charity that arises out of any conduct which the charity trustee knew (or must reasonably be assumed to have known) was not in the interests of the charity or in the case of which the charity trustee did not care whether it was in the interests of the charity or not.
- (3) For the purposes of subsection (2)(b) the reference to conviction does not include a conviction—
 - (a) quashed by an order under section 118(1)(b) or 183(1)(c) of the Criminal Procedure (Scotland) Act 1995 (c. 46),
 - (b) quashed by an order under section 118(1)(c) of that Act and which order has the effect of an acquittal by virtue of section 119(9) of that Act or otherwise,
 - (c) in relation to which the verdict is set aside by an order under section 183(1)(d) of that Act and which order has the effect of an acquittal by virtue of section 185(9) of that Act or otherwise.
- (4) This section—
 - (a) does not authorise the purchase of any insurance whose purchase is expressly prohibited by the charity's constitution,
 - (b) has effect despite any provision prohibiting the charity trustees receiving any personal benefit from the charity's funds.]

Textual Amendments

- F2** S. 68A inserted (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), ss. **127(2)**, **134(7)**; [S.S.I. 2010/221](#), art. 3(2), Sch.

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 1 Ch. 7A inserted by [2023 asp 5 s. 13\(2\)](#)
- s. 2(1A) inserted by [2023 asp 5 sch. para. 1\(2\)](#)
- s. 3(3)(aa) inserted by [2023 asp 5 s. 2\(2\)\(a\)](#)
- s. 3(6)(c) and word inserted by [2023 asp 5 sch. para. 3\(2\)\(b\)](#)
- s. 5(2)(aa) inserted by [2023 asp 5 s. 18\(3\)\(a\)](#)
- s. 5(3) inserted by [2023 asp 5 sch. para. 4\(2\)](#)
- s. 5(4)(5) inserted by [2023 asp 5 s. 18\(3\)\(b\)](#)
- s. 10(3) inserted by [2023 asp 5 sch. para. 6\(3\)\(b\)](#)
- s. 11(3A)(3B) inserted by [2023 asp 5 sch. para. 5\(2\)\(b\)](#)
- s. 11(4)(a) words in s. 11(4) renumbered as s. 11(4)(a) by [2023 asp 5 sch. para. 5\(2\)\(c\)\(i\)](#)
- s. 11(4)(b) and word inserted by [2023 asp 5 sch. para. 5\(2\)\(c\)\(ii\)](#)
- s. 11(5) inserted by [2023 asp 5 sch. para. 5\(2\)\(d\)](#)
- s. 12(2A) inserted by [2023 asp 5 sch. para. 6\(4\)\(b\)](#)
- s. 12(3A) inserted by [2023 asp 5 sch. para. 4\(3\)](#)
- s. 12(3B) inserted by [2023 asp 5 sch. para. 6\(4\)\(d\)](#)
- s. 12(6) inserted by [2023 asp 5 sch. para. 6\(4\)\(g\)](#)
- s. 17(1)(ba) inserted by [2023 asp 5 s. 3\(2\)](#)
- s. 19(1)-(1D) substituted for s. 19(1) by [2023 asp 5 sch. para. 9\(2\)](#)
- s. 23(1A) inserted by [2023 asp 5 sch. para. 10\(3\)](#)
- s. 24A inserted by [2023 asp 5 sch. para. 11\(3\)](#)
- s. 25(1)(ba)(bb) inserted by [2023 asp 5 sch. para. 11\(4\)\(a\)](#)
- s. 25(3)(4) inserted by [2023 asp 5 sch. para. 11\(4\)\(b\)](#)
- s. 28(2A) inserted by [2023 asp 5 s. 15\(3\)](#)
- s. 28(4A) inserted by [2023 asp 5 s. 15\(4\)](#)
- s. 29(2A) inserted by [2023 asp 5 s. 16\(2\)\(c\)](#)
- s. 30A inserted by [2023 asp 5 s. 18\(4\)](#)
- s. 30B inserted by [2023 asp 5 s. 17\(3\)](#)
- s. 32(2)(a) words in s. 32(2) renumbered as s. 32(2)(a) by [2023 asp 5 s. 17\(5\)\(a\)](#)
- s. 32(2)(a) words inserted by [2023 asp 5 s. 17\(5\)\(b\)](#)
- s. 32(2)(b) words in s. 32(2) renumbered as s. 32(2)(b) by [2023 asp 5 s. 17\(5\)\(c\)](#)
- s. 32(2)(b) words inserted by [2023 asp 5 s. 17\(5\)\(d\)](#)
- s. 33(1)(a)(ib) inserted by [2023 asp 5 s. 17\(7\)](#)
- s. 33(1)(a)(ia) inserted by [2023 asp 5 s. 18\(5\)](#)
- s. 42(6)-(10) substituted for s. 42(6)(7) by [2023 asp 5 s. 14\(2\)](#)
- s. 44(1)(ca) inserted by [2023 asp 5 s. 10\(2\)\(a\)\(i\)](#)
- s. 44(2A) inserted by [2023 asp 5 sch. para. 12\(3\)](#)
- s. 44(4A) inserted by [2023 asp 5 s. 10\(2\)\(b\)](#)
- s. 45A inserted by [2023 asp 5 s. 12\(4\)](#)
- s. 45B and cross-heading inserted by [2023 asp 5 s. 10\(3\)](#)
- s. 48A and cross-heading inserted by [2023 asp 5 sch. para. 15\(2\)](#)
- s. 52(3A)(3B) inserted by [2023 asp 5 sch. para. 16\(2\)](#)
- s. 64(1) words in s. 64 renumbered as s. 64(1) by [2023 asp 5 sch. para. 18\(2\)\(a\)](#)
- s. 64(2) inserted by [2023 asp 5 sch. para. 18\(2\)\(b\)](#)
- s. 66A and cross-heading inserted by [2023 asp 5 s. 3\(3\)](#)
- s. 69(2)(a)(ai) inserted by [2023 asp 5 s. 4\(2\)\(a\)\(i\)](#)
- s. 69(2)(b)(i) words in s. 69(2)(b) renumbered as s. 69(2)(b)(i) by [2023 asp 5 s. 5\(2\)\(a\)\(i\)](#)

- s. 69(2)(b)(i) words inserted by 2023 asp 5 s. 5(2)(a)(ii)
- s. 69(2)(b)(ii) inserted by 2023 asp 5 s. 5(2)(a)(iii)
- s. 69(2)(f)-(i) inserted by 2023 asp 5 s. 5(2)(d)
- s. 69(2)(da)(db) inserted by 2023 asp 5 s. 5(2)(c)
- s. 69(2A) inserted by 2023 asp 5 s. 5(3)(b)
- s. 69(3A) inserted by 2023 asp 5 s. 5(3)(c)
- s. 69(7) inserted by 2023 asp 5 s. 5(3)(e)
- s. 69A inserted by 2023 asp 5 s. 4(3)
- s. 69B inserted by 2023 asp 5 s. 6(2)
- s. 70(4)-(6) inserted by 2023 asp 5 s. 5(4)(b)
- s. 70A(5A) inserted by 2023 asp 5 s. 8(6)
- s. 70A(9) inserted by 2023 asp 5 s. 8(10)
- s. 70ZA70ZB inserted by 2023 asp 5 s. 7(3)
- s. 71(ib)(ic) inserted by 2023 asp 5 s. 18(6)
- s. 71(id) inserted by 2023 asp 5 s. 17(9)
- s. 71(mb) inserted by 2023 asp 5 s. 12(5)
- s. 71(pa) inserted by 2023 asp 5 s. 6(5)
- s. 71(pb) inserted by 2023 asp 5 s. 9(2)
- s. 71(pc) inserted by 2023 asp 5 s. 7(4)
- s. 72(2)(ba) inserted by 2023 asp 5 s. 16(3)(a)(ii)
- s. 72(2)(bb) inserted by 2023 asp 5 s. 9(3)
- s. 72(4) inserted by 2023 asp 5 s. 16(3)(b)
- s. 74(1A) inserted by 2023 asp 5 s. 9(5)
- s. 100(5A)-(5E) inserted by 2023 asp 5 sch. para. 20(2)
- s. 103(5)(ba) inserted by 2023 asp 5 s. 18(8)(b)
- s. 103(5)(bb) inserted by 2023 asp 5 s. 14(3)
- s. 103(5)(ca) inserted by 2023 asp 5 s. 5(5)
- s. 103(5)(cb) inserted by 2023 asp 5 s. 4(4)
- s. 103(5)(za) inserted by 2023 asp 5 s. 18(8)(a)