



# Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

## <sup>F1</sup>PART 1

### CHARITIES

#### CHAPTER 4

##### SUPERVISION OF CHARITIES ETC.

###### *Powers of Court of Session*

### 34 Powers of Court of Session

- (1) Where, on an application by OSCR, it appears to the Court of Session—
  - (a) that there is or has been misconduct in the administration of—
    - (i) a charity, or
    - (ii) a body controlled by a charity (or by two or more charities, when taken together), or
  - (b) that it is necessary or desirable to act for the purpose of protecting the property of a charity or securing a proper application of such property for its purposes, the court may exercise any of the powers set out in subsection (5)(a) and (c) to (g).
- (2) Where, on an application by OSCR, it appears to the Court of Session that a body which is not a charity is or has been representing itself as a charity, the court may exercise any of the powers set out in subsection (5)(b) to (g).
- (3) Where, on an application by OSCR, it appears to the Court of Session that a person is or has been representing a body which is not a charity as a charity, the court may exercise any of the powers set out in subsection (5)(f) to (h).
- (4) Where, on an application by OSCR, it appears to the Court of Session that a charity which is not entitled to refer to itself in either of the ways described in section 13(2) is being or has been represented as being established under the law of Scotland or

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managed or controlled wholly or mainly in or from Scotland, the court may exercise any of the powers set out in subsections (5)(f), (g) and (i).

- (5) Those powers are power to—
- (a) interdict (whether temporarily or permanently) the charity or body from such action as the court thinks fit,
  - (b) interdict (whether temporarily or permanently) the body from representing itself as a charity or from such other action as the court thinks fit,
  - (c) appoint a judicial factor (whether temporarily or permanently) to manage the affairs of the charity or body,
  - (d) where the charity or body is a trust, appoint a trustee,
  - (e) suspend or remove any person concerned in the management or control of the charity or body,
  - [<sup>F1</sup>(ea) make an order declaring that any person who was concerned in the management or control of a charity or body is to be treated, for the purpose of section 69(2)(c) (disqualification from being charity trustee) as having been removed from being concerned in the management or control of the charity or body, notwithstanding that—
    - (i) the person is no longer concerned in the management or control of the charity or body,
    - (ii) the body is no longer a charity,
    - (iii) the body is no longer controlled by a charity (or charities), or
    - (iv) the charity or body has ceased to exist,]
  - (f) order any relevant financial institution or other person holding property on behalf of the charity or body or of any person concerned in its management or control not to part with the property without the court's consent,
  - (g) make an order restricting the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the charity or body without the court's consent,
  - (h) interdict (whether temporarily or permanently) the person from representing the body as a charity or from such other action as the court thinks fit,
  - (i) interdict (whether temporarily or permanently) the charity or, as the case may be, the person from representing the charity as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland or from such other action as the court thinks fit.
- (6) Where the court appoints a trustee in pursuance of subsection (5)(d), section 22 of the Trusts (Scotland) Act 1921 (c. 58) applies as if the trustee had been appointed under that section.
- (7) The power in subsection (5)(g) applies despite anything in the constitution of the charity or body.
- (8) Subsection (9) applies where, on an application by OSCR, it appears to the Court of Session that there is or has been misconduct by a person falling within section 28(1)(d) in any activity which the person undertakes for or on behalf of the charity or body referred to in that provision.
- (9) The court may—
- (a) interdict (whether temporarily or permanently) the person from acting, or representing itself as acting, on behalf of the charity or body,

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- (b) order the person to pay to the charity or body any sums which it has collected for the charity or body and which are held by it, any relevant financial institution or other person holding money on its behalf, after deducting any sums payable to the person or any other person under an agreement with the charity or body,
  - (c) order any relevant financial institution or other person holding property which the court considers to be, or to represent, sums collected for the charity or body not to part with the property without the court's consent.
- (10) The court may—
- (a) recall the suspension of a person in pursuance of subsection (5)(e),
  - (b) vary or recall an order in pursuance of subsection (5)(f) or (g) or under subsection (9)(b) or (c).

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#### Textual Amendments

- F1** S. 34(5)(ea) inserted (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), ss. **122**, [134\(7\)](#); [S.S.I. 2010/221](#), art. 3(2), Sch.
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#### Commencement Information

- I1** S. 34 in force at 1.4.2006 by [S.S.I. 2006/189](#), art. 2(1), **Sch. Pt. 1** (with art. 3(2)-(4))

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 34(5)(ea) word substituted by [2023 asp 5 s. 7\(2\)\(a\)](#)
- s. 34(5)(ea) words inserted by [2023 asp 5 s. 7\(2\)\(b\)](#)
- s. 34(6) words substituted by [2024 asp 2 Sch. 1 para. 22](#)

**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)