



Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

PART 1

CHARITIES

CHAPTER 10

DECISIONS: NOTICES, REVIEWS AND APPEALS

Preliminary

71 Decisions

This Chapter applies to any decision by OSCR (or by a person to whom OSCR's functions are delegated by virtue of section 38) to—

- (a) refuse an application for entry in the Register, including entry as a SCIO under section 55, 58 or 60,
- (b) refuse to disapply section 3(3)(b) in relation to a charity,
- (c) give a direction under section 11(3),
- (d) give a direction under section 12(2) or (3),
- (e) refuse to give a direction under section 12(2),
- (f) refuse to consent to a charity taking any action set out in section 16(2),
- (g) give a direction under section 28(3),
- (h) make a requirement under section 29(1),
- (i) remove a charity from the Register under section 30(1) or (3),
- (j) suspend a person under section 31(4),
- (k) give a direction under section 31(5) or (8),
- (l) give a direction under section 31(6), (7) or (9),
- (m) refuse an application made for the purposes of section 39(1),
- (n) give a direction under section 53(2),

- (o) give a direction under section 67(7),
- (p) refuse to grant a waiver under section 69(4),
- (q) refuse to designate a charity as a designated religious charity or designated national collector, or
- (r) withdraw the designation of a charity as a designated religious charity or designated national collector.

Notice and effect of decisions

72 Notice of decisions

- (1) Any person who makes a decision to which this Chapter applies must, as soon as reasonably practicable after doing so, give notice of it to the person specified in subsection (2) and, where the decision is made by a person to whom OSCR's functions have been delegated by virtue of section 38, OSCR.
- (2) That person is—
 - (a) in the case of a decision referred to in paragraph (a), (g), (j), (k), (n) or (p) of section 71, the person in respect of whom the decision was made,
 - (b) in the case of a decision referred to in paragraph (e) of that section, the charity which requested OSCR to conduct a review under section 12, and
 - (c) in the case of any other decision referred to in that section, the charity in respect of which the decision was made.
- (3) A notice given under this section must—
 - (a) set out the decision,
 - (b) give the reasons for the decision, and
 - (c) where the notice is given to a person specified in subsection (2), advise the recipient of—
 - (i) the right to request OSCR to review the decision, and
 - (ii) the period within which such a request must be made.

73 Effect of decisions

- (1) Unless subsection (2) or (3) provides otherwise, a decision to which this Chapter applies (and any direction, requirement, suspension or other act in pursuance of such a decision) has effect from the day on which the notice required by section 72 is given.
- (2) A decision referred to in section 71(d), (i), (o) or (r) (and any direction, requirement, suspension or other act in pursuance of such a decision) is of no effect unless and until the notice required by section 72 is given and—
 - (a) the period within which OSCR must, on request, review the decision expires without a request being made, or
 - (b) where OSCR, on a request made within that period, confirms the decision (with or without variations)—
 - (i) the period within which that decision by OSCR may be appealed under section 76 to the Panel expires without an appeal being made, or
 - (ii) where such an appeal is made, it is abandoned or finally determined (by the Panel or, as the case may be, the Court of Session).

- (3) A decision referred to in section 71(h) (and any corresponding requirement) is of no effect unless and until the notice required by section 72 is given and—
- (a) the period within which OSCR must, on request, review the decision expires without a request being made, or
 - (b) where such a request is made, the date on which OSCR confirms the decision (with or without variations).

Reviews

74 Review of decisions

- (1) OSCR must, within 21 days of being requested to do so by a person given notice under section 72 of a decision to which this Chapter applies—
 - (a) review the decision,
 - (b) confirm, vary, reverse or revoke it, and
 - (c) give notice of its decision under paragraph (b) to the person who requested the review.
- (2) A notice under paragraph (c) of subsection (1) must set out OSCR's reasons for its decision under paragraph (b) of that section.
- (3) The duty in subsection (1) applies only if the request is made within 21 days of the notice under section 72 being given to the person making the request.
- (4) OSCR must publish any further procedures in accordance with which reviews are to be conducted.

Appeals

75 Scottish Charity Appeals Panel

- (1) The Scottish Ministers must, from time to time, constitute a panel to be known as the Scottish Charity Appeals Panel (in this Act referred to as “the Panel”) to exercise functions conferred on it by section 76.
- (2) Schedule 2 makes further provision about the Panel.

76 Appeals to Scottish Charity Appeals Panel

- (1) Where OSCR—
 - (a) confirms a decision under section 74(1), or
 - (b) reconfirms a decision under section 77(1),the decision (or, where OSCR varies the decision on confirming or reconfirming it, the decision as varied) may be appealed to the Panel.
- (2) A decision referred to in paragraph (g) or (h) of section 71 (whether or not confirmed with variations) may not, despite subsection (1)(a), be appealed to the Panel.
- (3) It is for the person whose request or, as the case may be, earlier appeal under this section caused OSCR to confirm or reconfirm the decision to make an appeal under subsection (1).

- (4) Such an appeal must be made within 28 days of the person entitled to appeal it being given notice of the confirmation or reconfirmation.
- (5) The Panel may—
 - (a) confirm a decision appealed to it,
 - (b) quash such a decision and direct OSCR to take such other action, if any, as the Panel thinks fit by such time as may be specified in the direction, or
 - (c) remit such a decision back to OSCR, together with the Panel’s reasons for doing so, for reconsideration.

77 Reconsideration of decision remitted to OSCR

- (1) OSCR must, within 14 days of a decision being remitted to it under section 76(5)(c)—
 - (a) reconsider the decision,
 - (b) confirm, vary, reverse or revoke it, and
 - (c) give notice of its decision under paragraph (b) to the person who appealed its earlier decision to the Panel.
- (2) That notice must set out OSCR’s reasons for its decision under subsection (1)(b).

78 Appeals to Court of Session

- (1) Any decision of the Panel under section 76(5) may be appealed by—
 - (a) the person who appealed to the Panel, or
 - (b) OSCR,to the Court of Session.
- (2) Any decision of OSCR (or by a person to whom OSCR’s functions are delegated by virtue of section 38) to suspend a person by notice under section 31(4) may be appealed by the person suspended to the Court of Session.
- (3) The Court of Session may—
 - (a) confirm the decision appealed to it, or
 - (b) quash the decision and direct OSCR (or the person to whom OSCR’s functions are delegated by virtue of section 38, as the case may be) to take such action, if any, as the Court thinks fit by such time as may be specified in the direction.