



# Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

## PART 1

### CHARITIES

#### CHAPTER 4

##### SUPERVISION OF CHARITIES ETC.

###### *Inquiries*

### 28 Inquiries about charities etc.

- (1) OSCR may at any time make inquiries, either generally or for particular purposes, with regard to—
- (a) a charity,
  - (b) a body controlled by a charity (or by two or more charities, when taken together),
  - (c) a body which is not entered in the Register which appears to OSCR to represent itself as a charity (or which would, but for section 14, so appear),
  - (d) a person not falling within paragraph (a) to (c) who appears to OSCR to act, or to represent itself as acting, for or on behalf of—
    - (i) a charity, or
    - (ii) a body falling within paragraph (b) or (c),
  - (e) a person who appears to OSCR to represent a body which is not entered in the Register as a charity,
  - (f) any particular type of charity, of body falling within paragraph (b) or (c), or of person falling within paragraph (d) or (e).
- (2) OSCR may make inquiries under subsection (1) of its own accord or on the representation of any person.

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- (3) OSCR may direct any charity, body or person with regard to which it is making inquiries under subsection (1) not to undertake activities specified in the direction for such period of not more than 6 months as is specified in the direction.
- (4) A direction under subsection (3) given to a person falling within paragraph (d) or (e) of subsection (1) may be given only in relation to activities which that person undertakes for or on behalf of the charity or body to which the inquiries relate.
- (5) A direction under subsection (3)—
  - (a) may be revoked at any time,
  - (b) may be varied, but not so as to have effect for a period of more than 6 months from the date on which it is given.
- (6) A person who, without reasonable excuse, refuses or fails to comply with a direction under subsection (3) is guilty of an offence.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 4 on the standard scale or imprisonment for a period not exceeding 3 months, or to both.

## **29 Power of OSCR to obtain information for inquiries**

- (1) OSCR may by notice require any person to provide to it—
  - (a) any document, or a copy of or extract from any document,
  - (b) documents of any type, or copies of or extracts from such documents,
  - (c) any information or explanation,
 which OSCR considers necessary for the purposes of inquiries under section 28.
- (2) The notice must specify—
  - (a) the documents, type of documents, copies, extracts, information or explanation which the person is to provide to OSCR,
  - (b) the date (which must be at least 14 days after the date on which the notice is given) by which the person must do so, and
  - (c) the effect of subsection (6).
- (3) Subsection (1) does not authorise OSCR to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.
- (4) OSCR must not disclose any document, information or explanation provided in response to a requirement under subsection (1) except for the purposes of the inquiries in connection with which the requirement was made.
- (5) OSCR may pay to any person a sum in respect of expenses reasonably incurred by the person in complying with a requirement under subsection (1).
- (6) A person who, without reasonable excuse, refuses or fails to comply with a requirement under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale or imprisonment for a period not exceeding 3 months, or to both.

**30 Removal from Register of charity which no longer meets charity test**

- (1) Where it appears to OSCR, as a result of inquiries under section 28, that a charity no longer meets the charity test it must—
  - (a) direct the charity to take, within such period as may be specified in the direction, such steps as OSCR considers necessary for the purposes of meeting the charity test, or
  - (b) remove the charity from the Register.
- (2) Steps specified in a direction under subsection (1)(a) may include applying to OSCR for approval under section 39 of a reorganisation scheme in relation to the charity's constitution.
- (3) OSCR must, if a charity fails to comply with a direction under subsection (1)(a), remove the charity from the Register.

**31 Powers of OSCR following inquiries**

- (1) Subsections (4), (6) and (7) apply where it appears to OSCR, as a result of inquiries under section 28—
  - (a) that there has been misconduct in the administration of—
    - (i) a charity, or
    - (ii) a body controlled by a charity, 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.
- (2) Subsections (5) to (7) apply where it appears to OSCR, as a result of inquiries under section 28—
  - (a) that a body which is not a charity is being or has been represented as a charity, or
  - (b) 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 managed or controlled wholly or mainly in or from Scotland.
- (3) Subsections (8) and (9) apply where it appears to OSCR, as a result of inquiries under section 28, 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.
- (4) OSCR may, by notice, suspend any person concerned in the management or control of the charity or body who appears to it to—
  - (a) have been responsible for or privy to the misconduct,
  - (b) have contributed to, or facilitated, the misconduct, or
  - (c) be unable or unfit to perform that person's functions in relation to the property of the charity or body.
- (5) OSCR may direct—
  - (a) the body representing itself as a charity,
  - (b) the person representing the body as a charity,
  - (c) the charity representing itself as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland, or, as the case may be

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- (d) the person representing the charity as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland, to stop doing so.
- (6) OSCR may give a direction 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 OSCR's consent.
- (7) OSCR may direct 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 OSCR's consent.
- (8) OSCR may direct the person—
  - (a) to cease acting, or representing itself as acting, for or on behalf of the charity or body in any activity specified in the direction,
  - (b) to pay to the charity or body, within such period as the direction may specify, any sums which it has collected for the charity or body and which are held by it or by any relevant financial institution or other person on its behalf, after deducting any sums payable to the person or any other person under an agreement with the charity or body.
- (9) OSCR may direct any relevant financial institution or other person holding property which OSCR considers to be, or to represent, sums collected for the charity or body not to part with the property without OSCR's consent.
- (10) OSCR's power to suspend a person by giving notice under subsection (4)(a) or (b) does not apply if OSCR considers that the person has acted honestly and reasonably in relation to the misconduct concerned and ought fairly to be excused.

### **32 Suspensions and directions: procedure**

- (1) A suspension under subsection (4) and a direction under any of subsections (5) to (9) of section 31—
  - (a) has effect for such period of not more than 6 months as is specified in the suspension or direction,
  - (b) may be revoked at any time,
  - (c) may be varied, but not so as to have effect for a period of more than 6 months from the date on which the suspension or direction first has effect.
- (2) Where such a suspension has been made or direction has been given, a further suspension or direction may be made or given under section 31 but the further suspension or direction ceases to have effect on the same date as the original suspension or direction (unless stated to cease to have effect earlier).
- (3) A copy of the notice given under section 72 in respect of a—
  - (a) suspension under subsection (4) of section 31, or
  - (b) direction under subsection (5)(b) or (d) or (8) of that section,
 must be given to the charity or body in question.
- (4) A copy of the notice given under section 72 in respect of a direction under subsection (7) or (9) of that section must be given to the person directed.
- (5) A person who, without reasonable excuse—
  - (a) contravenes a suspension under subsection (4) of section 31, or

- (b) refuses or fails to comply with a direction under any of subsections (5) to (9) of that section,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a period not exceeding 6 months, or to both.

### **33 Reports on inquiries**

- (1) OSCR must prepare a report of the subject matter of inquiries made under section 28 if—

- (a) as a result of the inquiries it—
  - (i) gives a direction, or removes a charity from the Register, under section 30,
  - (ii) suspends a person under subsection (4) of section 31, or
  - (iii) gives a direction under any of subsections (5) to (9) of that section, or
- (b) in any other case, it is requested to do so by the person in respect of whom the inquiries were made and it has not previously prepared a report of the subject matter of those inquiries under this subsection or subsection (2).

- (2) OSCR may prepare a report of the subject matter of any other inquiries under section 28.

- (3) A report prepared under this section may relate to two or more inquiries.

- (4) Apart from identifying the person in respect of whom inquiries were made, a report under this section must not—

- (a) mention the name of any person, or
- (b) contain any particulars which, in OSCR's opinion—
  - (i) are likely to identify any person, and
  - (ii) can be omitted without impairing the effectiveness of the report,

unless OSCR considers it is necessary to do so.

- (5) OSCR must—

- (a) send a copy of a report prepared under subsection (1) to the person in respect of whom the inquiries were made, and
- (b) publish a report prepared under this section or such other statement of the result of inquiries made under section 28 as OSCR thinks fit in such manner as OSCR thinks fit.