



# Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

## 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,
  - (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,
  - (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).

### **35 Transfer schemes**

- (1) The Court of Session may, on an application by OSCR, approve a scheme prepared by OSCR in accordance with regulations made by the Scottish Ministers for the transfer to a charity specified in the scheme of any assets of—
  - (a) another charity,
  - (b) a body which is controlled by a charity (or by two or more charities, when taken together),
  - (c) a body which is not a charity but which is or has been representing itself as a charity.
- (2) The court may approve a scheme in relation to a charity only if it is satisfied—
  - (a) that there is or has been misconduct in the administration of the charity,
  - (b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application of such property for its purposes, and
  - (c) that the charity's purposes would be better achieved by transferring its assets to another charity.
- (3) The court may approve a scheme in relation to a body falling within paragraph (b) of subsection (1) only if it is satisfied—
  - (a) that there is or has been misconduct in the administration of the body or any of the charities which control it,
  - (b) that it is necessary or desirable to act for the purpose of protecting the property of the body or any such charity, and
  - (c) that the transfer provided for by the scheme is reasonable.
- (4) The court may approve a scheme in relation to a body falling within paragraph (c) of subsection (1) only if it is satisfied—
  - (a) that the body falls within that paragraph, and
  - (b) that the transfer provided for by the scheme is reasonable.
- (5) The court may approve a scheme under this section subject to modifications.
- (6) A charity receiving property in pursuance of a scheme approved under this section may apply that property for its purposes as it thinks fit.

### **36 Powers in relation to English and Welsh charities**

- (1) Subsection (2) applies where the Charity Commissioners for England and Wales inform OSCR that a relevant financial institution or other person in Scotland holds moveable property on behalf of a body—
  - (a) which is registered as a charity in England and Wales under section 3 of the Charities Act 1993 (c. 10), or
  - (b) which, by virtue of section 3(5) of that Act, is not required to register as a charity under that section.

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- (2) The Court of Session may, on an application by OSCR, make an order requiring the relevant financial institution or other person not to part with the property without the court's consent.
- (3) An order under subsection (2) may be made subject to conditions and may be varied or recalled.
- (4) Where the court has made an order under subsection (2) and, on an application by OSCR, it is satisfied as to the matters set out in subsection (5) it may transfer the property to a charity specified in the application—
  - (a) which has purposes which are the same as or which resemble closely the purposes of the body whose property is transferred, and
  - (b) which has intimated that it is prepared to receive the property.
- (5) Those matters are—
  - (a) that there has been misconduct in the administration of the body, and
  - (b) that it is necessary or desirable to transfer the property for the purpose of protecting it or securing a proper application of it for the purposes of the body from which it is to be transferred.

### **37 Expenses**

In proceedings before it under sections 34 to 36 in relation to a charity, the Court of Session may, instead of awarding expenses against the charity, award expenses against a charity trustee of the charity or against any two or more of its charity trustees jointly and severally.