



Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

1990 CHAPTER 40

PART I

CHARITIES

Dormant charities

12 Dormant accounts of charities in banks, etc

- (1) The Secretary of State may appoint a person to be the Scottish charities nominee (in this section referred to as “the nominee”) who shall have the functions conferred by this section.
- (2) Where the nominee receives from a relevant institution the following information—
 - (a) that every account held by the institution in the name of or on behalf of a named body is dormant; and
 - (b) the amount of the balance standing to the credit of the body in each such account,and he is satisfied that the body is a recognised body, subsection (3) or, as the case may be, subsection (5) below shall apply as regards the body and such accounts.
- (3) Where the aggregate amount standing to the credit of the body in such accounts as are mentioned in subsection (2) above does not exceed £5,000, unless it appears to the nominee—
 - (a) that a person is concerned in the management or control of the body; or
 - (b) that there are circumstances relating to the body which would make it inappropriate to do so,

he shall transfer the balance standing to the credit of the body in such accounts to such other recognised body as he may determine, having regard to the purposes of the body in whose name or on whose behalf the accounts are held and those of the body to which it is proposed to transfer the funds; and the body to which the funds

Status: This is the original version (as it was originally enacted).

are transferred under this subsection or subsection (4) below shall be entitled to apply such funds for its purposes as it thinks fit.

- (4) Where, in the case of a body to which subsection (3) above applies, the nominee is unable to ascertain the purposes of the body in whose name or on whose behalf such accounts are held, he shall transfer the balance standing in the name of the body concerned to such other recognised body as appears to him expedient.
- (5) Where the aggregate amount standing to the credit of the body in such accounts as are mentioned in subsection (2) above exceeds £5,000 or in any case to which paragraphs (a) or (b) of subsection (3) above applies, the nominee shall advise the Lord Advocate of the information received by him in respect of the body and of any other matter which appears to him to be relevant in the circumstances.
- (6) Where the Lord Advocate receives information in pursuance of subsection (5) above he shall inform the nominee—
- (a) in the case of a body which is a trust, whether he intends to exercise his power under section 13(2) of this Act to appoint new trustees to the body; or
 - (b) in any case, if he intends to apply to the Court of Session for the appointment of an interim judicial factor under section 7(4)(c) of this Act,
- but if the Lord Advocate informs the nominee that he does not intend to proceed under either paragraph (a) or (b) above, subsection (3) above shall apply as regards the body and such accounts as are mentioned in subsection (2) above as if the aggregate amount of the balance referred to in subsection (3) did not exceed £5,000 and neither paragraph (a) nor (b) of that subsection applied.
- (7) Notwithstanding anything in any enactment or rule of law to the contrary, the nominee shall, by virtue of this subsection, have the right to effect any transaction (including a transaction closing the account) in relation to any account to which subsection (3) above applies; and the receipt of the nominee in respect of any funds withdrawn or transferred from an account by virtue of this subsection shall, as regards the interest of the nominee in respect of such funds, be a full and valid discharge to the relevant institution holding the account.
- (8) No liability (other than liability for a criminal offence) shall attach to the nominee in consequence of any act or omission of his in the performance of his functions under this section.
- (9) The power of the nominee to effect transactions in relation to the accounts of a body shall cease to have effect—
- (a) when the Lord Advocate notifies him of his intention to proceed under subsection (6) above;
 - (b) if the relevant institution by which the accounts are held notifies the nominee that the accounts held by or on behalf of the body are no longer dormant; or
 - (c) where the nominee becomes aware of the identity of a person concerned in the management or control of the body, when he informs the institution of that fact,
- and in any case to which paragraph (c) above applies, the nominee shall also inform the Lord Advocate of that fact.
- (10) The Secretary of State may, by regulations made under this section—
- (a) make provision as to the procedure to be followed by the nominee in exercising his powers under this section;

- (b) require the nominee to make to the Secretary of State an annual report as regards the exercise of his functions and such regulations may specify the form and content of such report; and the Secretary of State shall lay a copy of such report before each House of Parliament;
 - (c) prescribe the circumstances in which and the extent to which the nominee may apply any interest accruing to any account as regards which subsection (3) above applies during any period for which he is entitled to effect transactions in respect of the account for the purpose of defraying his expenses in connection with the exercise of his functions under this section;
 - (d) require the nominee to keep accounts as regards his outlays and expenses in connection with the exercise of his functions under this section; and
 - (e) amend subsections (3) and (5) above by substituting a different figure for the figure for the time being mentioned in those subsections.
- (11) Where every account held by or on behalf of a body which appears to a relevant institution to be a recognised body is a dormant account, no obligation of confidentiality or requirement of secrecy (whether imposed by any enactment or rule of law or otherwise) shall prevent the institution from supplying to the nominee information such as is mentioned in subsection (12) below.
- (12) Information referred to in subsection (11) above is information relating to any account such as is mentioned in that subsection which consists of any of the following—
- (a) the amount of the balance of the account as at the date the information is supplied;
 - (b) the last date on which a transaction (other than a transaction consisting only of the accrual of interest to the account) was effected in relation to the account;
 - (c) so far as is known to the institution, the terms of the trust deed or other document constituting the body or any information as to the nature of the purposes of the body.
- (13) For the purpose of this section—
- (a) a “relevant institution” is—
 - (i) an institution which is authorised by the Bank of England to operate a deposit-taking business under Part I of the Banking Act 1987;
 - (ii) a building society which is authorised by the Building Societies Commission under section 9 of the Building Societies Act 1986 to raise money from its members;
 - (iii) such other institution mentioned in Schedule 2 to the Banking Act 1987 as the Secretary of State may, by regulations made under this section, prescribe;
 - (b) an account is dormant if—
 - (i) in the period of ten years preceding the date on which the institution reviews the account, no transaction (other than a transaction consisting only of the accrual of interest to the account) has taken place in respect of the account; and
 - (ii) the institution has no knowledge of the identity of any person concerned in the management or control of the body in whose name or on whose behalf the account is held.