



Charities Act 2006

2006 CHAPTER 50

PART 2

REGULATION OF CHARITIES

CHAPTER 9

CHARITY TRUSTEES ETC.

Waiver of disqualification

35 Waiver of trustee's disqualification

In section 72 of the 1993 Act (disqualification for being trustee of a charity) after subsection (4) insert—

“(4A) If—

- (a) a person disqualified under subsection (1)(d) or (e) makes an application under subsection (4) above five years or more after the date on which his disqualification took effect, and
- (b) the Commission is not prevented from granting the application by virtue of paragraphs (a) and (b) of subsection (4),

the Commission must grant the application unless satisfied that, by reason of any special circumstances, it should be refused.”

Remuneration of trustees etc.

36 Remuneration of trustees etc. providing services to charity

After section 73 of the 1993 Act insert—

Status: This is the original version (as it was originally enacted).

“73A Remuneration of trustees etc. providing services to charity

- (1) This section applies to remuneration for services provided by a person to or on behalf of a charity where—
- (a) he is a charity trustee or trustee for the charity, or
 - (b) he is connected with a charity trustee or trustee for the charity and the remuneration might result in that trustee obtaining any benefit.

This is subject to subsection (7) below.

- (2) If conditions A to D are met in relation to remuneration within subsection (1), the person providing the services (“the relevant person”) is entitled to receive the remuneration out of the funds of the charity.
- (3) Condition A is that the amount or maximum amount of the remuneration—
- (a) is set out in an agreement in writing between—
 - (i) the charity or its charity trustees (as the case may be), and
 - (ii) the relevant person,
 under which the relevant person is to provide the services in question to or on behalf of the charity, and
 - (b) does not exceed what is reasonable in the circumstances for the provision by that person of the services in question.
- (4) Condition B is that, before entering into that agreement, the charity trustees decided that they were satisfied that it would be in the best interests of the charity for the services to be provided by the relevant person to or on behalf of the charity for the amount or maximum amount of remuneration set out in the agreement.
- (5) Condition C is that if immediately after the agreement is entered into there is, in the case of the charity, more than one person who is a charity trustee and is—
- (a) a person in respect of whom an agreement within subsection (3) above is in force, or
 - (b) a person who is entitled to receive remuneration out of the funds of the charity otherwise than by virtue of such an agreement, or
 - (c) a person connected with a person falling within paragraph (a) or (b) above,
- the total number of them constitute a minority of the persons for the time being holding office as charity trustees of the charity.
- (6) Condition D is that the trusts of the charity do not contain any express provision that prohibits the relevant person from receiving the remuneration.
- (7) Nothing in this section applies to—
- (a) any remuneration for services provided by a person in his capacity as a charity trustee or trustee for a charity or under a contract of employment, or
 - (b) any remuneration not within paragraph (a) which a person is entitled to receive out of the funds of a charity by virtue of any provision or order within subsection (8).
- (8) The provisions or orders within this subsection are—

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

- (a) any provision contained in the trusts of the charity,
- (b) any order of the court or the Commission,
- (c) any statutory provision contained in or having effect under an Act of Parliament other than this section.

(9) Section 73B below applies for the purposes of this section.

73B Supplementary provisions for purposes of section 73A

- (1) Before entering into an agreement within section 73A(3) the charity trustees must have regard to any guidance given by the Commission concerning the making of such agreements.
- (2) The duty of care in section 1(1) of the Trustee Act 2000 applies to a charity trustee when making such a decision as is mentioned in section 73A(4).
- (3) For the purposes of section 73A(5) an agreement within section 73A(3) is in force so long as any obligations under the agreement have not been fully discharged by a party to it.
- (4) In section 73A—
 - “benefit” means a direct or indirect benefit of any nature;
 - “maximum amount”, in relation to remuneration, means the maximum amount of the remuneration whether specified in or ascertainable under the terms of the agreement in question;
 - “remuneration” includes any benefit in kind (and “amount” accordingly includes monetary value);
 - “services”, in the context of remuneration for services, includes goods that are supplied in connection with the provision of services.
- (5) For the purposes of section 73A the following persons are “connected” with a charity trustee or trustee for a charity—
 - (a) a child, parent, grandchild, grandparent, brother or sister of the trustee;
 - (b) the spouse or civil partner of the trustee or of any person falling within paragraph (a);
 - (c) a person carrying on business in partnership with the trustee or with any person falling within paragraph (a) or (b);
 - (d) an institution which is controlled—
 - (i) by the trustee or by any person falling within paragraph (a), (b) or (c), or
 - (ii) by two or more persons falling within sub-paragraph (i), when taken together;
 - (e) a body corporate in which—
 - (i) the trustee or any connected person falling within any of paragraphs (a) to (c) has a substantial interest, or
 - (ii) two or more persons falling within sub-paragraph (i), when taken together, have a substantial interest.
- (6) Paragraphs 2 to 4 of Schedule 5 to this Act apply for the purposes of subsection (5) above as they apply for the purposes of provisions of that Schedule.”

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

37 Disqualification of trustee receiving remuneration by virtue of section 36

After section 73B of the 1993 Act (inserted by section 36 above) insert—

“73C Disqualification of trustee receiving remuneration under section 73A

- (1) This section applies to any charity trustee or trustee for a charity—
 - (a) who is or would be entitled to remuneration under an agreement or proposed agreement within section 73A(3) above, or
 - (b) who is connected with a person who is or would be so entitled.
- (2) The charity trustee or trustee for a charity is disqualified from acting as such in relation to any decision or other matter connected with the agreement.
- (3) But any act done by such a person which he is disqualified from doing by virtue of subsection (2) above shall not be invalid by reason only of that disqualification.
- (4) Where the Commission is satisfied—
 - (a) that a person (“the disqualified trustee”) has done any act which he was disqualified from doing by virtue of subsection (2) above, and
 - (b) that the disqualified trustee or a person connected with him has received or is to receive from the charity any remuneration under the agreement in question,it may make an order under subsection (5) or (6) below (as appropriate).
- (5) An order under this subsection is one requiring the disqualified trustee—
 - (a) to reimburse to the charity the whole or part of the remuneration received as mentioned in subsection (4)(b) above;
 - (b) to the extent that the remuneration consists of a benefit in kind, to reimburse to the charity the whole or part of the monetary value (as determined by the Commission) of the benefit in kind.
- (6) An order under this subsection is one directing that the disqualified trustee or (as the case may be) connected person is not to be paid the whole or part of the remuneration mentioned in subsection (4)(b) above.
- (7) If the Commission makes an order under subsection (5) or (6) above, the disqualified trustee or (as the case may be) connected person accordingly ceases to have any entitlement under the agreement to so much of the remuneration (or its monetary value) as the order requires him to reimburse to the charity or (as the case may be) as it directs is not to be paid to him.
- (8) Subsections (4) to (6) of section 73B above apply for the purposes of this section as they apply for the purposes of section 73A above.”

Liability of trustees etc.

38 Power of Commission to relieve trustees, auditors etc. from liability for breach of trust or duty

After section 73C of the 1993 Act (inserted by section 37 above) insert—

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

“73D Power to relieve trustees, auditors etc. from liability for breach of trust or duty

- (1) This section applies to a person who is or has been—
 - (a) a charity trustee or trustee for a charity,
 - (b) a person appointed to audit a charity’s accounts (whether appointed under an enactment or otherwise), or
 - (c) an independent examiner, reporting accountant or other person appointed to examine or report on a charity’s accounts (whether appointed under an enactment or otherwise).
- (2) If the Commission considers—
 - (a) that a person to whom this section applies is or may be personally liable for a breach of trust or breach of duty committed in his capacity as a person within paragraph (a), (b) or (c) of subsection (1) above, but
 - (b) that he has acted honestly and reasonably and ought fairly to be excused for the breach of trust or duty,the Commission may make an order relieving him wholly or partly from any such liability.
- (3) An order under subsection (2) above may grant the relief on such terms as the Commission thinks fit.
- (4) Subsection (2) does not apply in relation to any personal contractual liability of a charity trustee or trustee for a charity.
- (5) For the purposes of this section and section 73E below—
 - (a) subsection (1)(b) above is to be read as including a reference to the Auditor General for Wales acting as auditor under section 43B above, and
 - (b) subsection (1)(c) above is to be read as including a reference to the Auditor General for Wales acting as examiner under that section;and in subsection (1)(b) and (c) any reference to a charity’s accounts is to be read as including any group accounts prepared by the charity trustees of a charity.
- (6) This section does not affect the operation of—
 - (a) section 61 of the Trustee Act 1925 (power of court to grant relief to trustees),
 - (b) section 727 of the Companies Act 1985 (power of court to grant relief to officers or auditors of companies), or
 - (c) section 73E below (which extends section 727 to auditors etc. of charities which are not companies).

73E Court’s power to grant relief to apply to all auditors etc. of charities which are not companies

- (1) Section 727 of the Companies Act 1985 (power of court to grant relief to officers or auditors of companies) shall have effect in relation to a person to whom this section applies as it has effect in relation to a person employed as an auditor by a company.

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

(2) This section applies to—

- (a) a person acting in a capacity within section 73D(1)(b) or (c) above in a case where, apart from this section, section 727 would not apply in relation to him as a person so acting, and
- (b) a charity trustee of a CIO.””

39 Trustees' indemnity insurance

After section 73E of the 1993 Act (inserted by section 38 above) insert—

“73F Trustees' indemnity insurance

- (1) The charity trustees of a charity may arrange for the purchase, out of the funds of the charity, of insurance designed to indemnify the charity trustees or any trustees for the charity against any personal liability in respect of—
 - (a) any breach of trust or breach of duty committed by them in their capacity as charity trustees or trustees for the charity, or
 - (b) any negligence, default, breach of duty or breach of trust committed by them in their capacity as directors or officers of the charity (if it is a body corporate) or of any body corporate carrying on any activities on behalf of the charity.
- (2) The terms of such insurance must, however, be so framed as to exclude the provision of any indemnity for a person in respect of—
 - (a) any liability incurred by him to pay—
 - (i) a fine imposed in criminal proceedings, or
 - (ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising);
 - (b) any liability incurred by him in defending any criminal proceedings in which he is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by him; or
 - (c) any liability incurred by him to the charity that arises out of any conduct which he knew (or must reasonably be assumed to have known) was not in the interests of the charity or in the case of which he did not care whether it was in the best interests of the charity or not.
- (3) For the purposes of subsection (2)(b) above—
 - (a) the reference to any such conviction is a reference to one that has become final;
 - (b) a conviction becomes final—
 - (i) if not appealed against, at the end of the period for bringing an appeal, or
 - (ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of; and
 - (c) an appeal is disposed of—
 - (i) if it is determined and the period for bringing any further appeal has ended, or
 - (ii) if it is abandoned or otherwise ceases to have effect.

- (4) The charity trustees of a charity may not purchase insurance under this section unless they decide that they are satisfied that it is in the best interests of the charity for them to do so.
- (5) The duty of care in section 1(1) of the Trustee Act 2000 applies to a charity trustee when making such a decision.
- (6) The Minister may by order make such amendments of subsections (2) and (3) above as he considers appropriate.
- (7) No order may be made under subsection (6) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (8) This section—
 - (a) does not authorise the purchase of any insurance whose purchase is expressly prohibited by the trusts of the charity, but
 - (b) has effect despite any provision prohibiting the charity trustees or trustees for the charity receiving any personal benefit out of the funds of the charity.”