



# Charities Act 2011

## 2011 CHAPTER 25

### PART 9

#### CHARITY TRUSTEES, TRUSTEES AND AUDITORS ETC.

##### *Meaning of “charity trustees”*

#### **177 Meaning of “charity trustees”**

In this Act, except in so far as the context otherwise requires, “charity trustees” means the persons having the general control and management of the administration of a charity.

##### *Disqualification of charity trustees and trustees*

#### **178 Persons disqualified from being charity trustees or trustees of a charity**

- (1) A person (“P”) is disqualified from being a charity trustee or trustee for a charity in the following cases—

*Case A*

P has been convicted of any offence involving dishonesty or deception.

*Case B*

P has been adjudged bankrupt or sequestration of P's estate has been awarded and (in either case)—

- (a) P has not been discharged, or
- (b) P is the subject of a bankruptcy restrictions order or an interim order.

*Case C*

P has made a composition or arrangement with, or granted a trust deed for, creditors and has not been discharged in respect of it.

*Case D*

*Status: Point in time view as at 14/03/2012.*

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P has been removed from the office of charity trustee or trustee for a charity by an order made—

- (a) by the Commission under section 79(2)(a) or by the Commission or the Commissioners under a relevant earlier enactment (as defined by section 179(5)), or
- (b) by the High Court,

on the ground of any misconduct or mismanagement in the administration of the charity for which P was responsible or to which P was privy, or which P's conduct contributed to or facilitated.

*Case E*

P has been removed, under section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) (powers of the Court of Session) or the relevant earlier legislation (as defined by section 179(6)), from being concerned in the management or control of any body.

*Case F*

P is subject to—

- (a) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I.4)), or
- (b) an order made under section 429(2) of the Insolvency Act 1986 (disabilities on revocation of county court administration order).

(2) Subsection (1) is subject to sections 179 to 181.

## **179 Disqualification: pre-commencement events etc.**

(1) Case A—

- (a) applies whether the conviction occurred before or after the commencement of section 178(1), but
- (b) does not apply in relation to any conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974.

(2) Case B applies whether the adjudication of bankruptcy or the sequestration or the making of a bankruptcy restrictions order or an interim order occurred before or after the commencement of section 178(1).

(3) Case C applies whether the composition or arrangement was made, or the trust deed was granted, before or after the commencement of section 178(1).

(4) Cases D to F apply in relation to orders made and removals effected before or after the commencement of section 178(1).

(5) In Case D—

- (a) “the Commissioners” means the Charity Commissioners for England and Wales, and
- (b) “relevant earlier enactment” means—
  - (i) section 18(2)(i) of the Charities Act 1993 (power to act for protection of charities),
  - (ii) section 20(1A)(i) of the Charities Act 1960, or

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(iii) section 20(1)(i) of the 1960 Act (as in force before the commencement of section 8 of the Charities Act 1992).

- (6) In Case E, “the relevant earlier legislation” means section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (powers of Court of Session to deal with management of charities).

## **180 Disqualification: exceptions in relation to charitable companies**

- (1) Where (apart from this subsection) a person (“P”) is disqualified under Case B from being a charity trustee or trustee for a charitable company, P is not so disqualified if leave has been granted under section 11 of the Company Directors Disqualification Act 1986 (undischarged bankrupts) for P to act as director of the company.
- (2) Similarly, a person (“P”) is not disqualified under Case F from being a charity trustee or trustee for a charitable company if, in a case set out in the first column of the table, leave has been granted as mentioned in the second column for P to act as director of the company—

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P is subject to a disqualification order under the Company Directors Disqualification Act 1986.	Leave has been granted for the purposes of section 1(1)(a) or 1A(1)(a) of the 1986 Act.
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P is subject to a disqualification order under the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I.4)).	Leave has been granted by the High Court in Northern Ireland.
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P is subject to an order under section 429(2) of the Insolvency Act 1986.	Leave has been granted by the court which made the order.
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## **181 Power to waive disqualification**

- (1) This section applies where a person (“P”) is disqualified under section 178(1).
- (2) The Commission may, if P makes an application under this subsection, waive P’s disqualification—
- (a) generally, or
  - (b) in relation to a particular charity or a particular class of charities.
- (3) If—
- (a) P is disqualified under Case D or E and makes an application under subsection (2) 5 years or more after the date on which the disqualification took effect, and
  - (b) the Commission is not prevented from granting the application by subsection (5),
- the Commission must grant the application unless satisfied that, because of any special circumstances, it should be refused.
- (4) Any waiver under subsection (2) must be notified in writing to P.
- (5) No waiver may be granted under subsection (2) in relation to any charitable company if—

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- (a) P is for the time being prohibited from acting as director of the company, by virtue of—
    - (i) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986, or
    - (ii) a provision of the 1986 Act mentioned in subsection (6), and
  - (b) leave has not been granted for P to act as director of any other company.
- (6) The provisions of the 1986 Act are—
- section 11(1) (undischarged bankrupts);
  - section 12(2) (failure to pay under county court administration order);
  - section 12A (Northern Irish disqualification orders);
  - section 12B (Northern Irish disqualification undertakings).

## **182 Records of persons removed from office**

- (1) For the purposes of sections 178 to 181 the Commission must keep, in such manner as it thinks fit, a register of all persons who have been removed from office as mentioned in Case D—
- (a) by an order of the Commission or the Commissioners made before or after the commencement of section 178(1), or
  - (b) by an order of the High Court made after the commencement of section 45(1) of the Charities Act 1992;
- and, where any person is so removed from office by an order of the High Court, the court must notify the Commission of the person's removal.
- (2) The entries in the register kept under subsection (1) must be available for public inspection in legible form at all reasonable times.
- (3) In this section “the Commissioners” means the Charity Commissioners for England and Wales.

## **183 Criminal consequences of acting while disqualified**

- (1) Subject to subsection (2), it is an offence for any person to act as a charity trustee or trustee for a charity while disqualified from being such a trustee by virtue of section 178.
- (2) Subsection (1) does not apply if—
- (a) the charity concerned is a company, and
  - (b) the disqualified person is disqualified by virtue only of Case B or F.
- (3) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

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## **184 Civil consequences of acting while disqualified**

- (1) Any acts done as charity trustee or trustee for a charity by a person disqualified from being such a trustee by virtue of section 178 are not invalid merely because of that disqualification.
- (2) Subsection (3) applies if the Commission is satisfied that any person—
  - (a) has acted as charity trustee or trustee for a charity while disqualified from being such a trustee by virtue of section 178, and
  - (b) while so acting, has received from the charity any sums by way of remuneration or expenses, or any benefit in kind, in connection with acting as charity trustee or trustee for the charity.
- (3) The Commission may by order direct the person—
  - (a) to repay to the charity the whole or part of any such sums, or
  - (b) (as the case may be) to pay to the charity the whole or part of the monetary value (as determined by the Commission) of any such benefit.
- (4) Subsection (3) does not apply to any sums received by way of remuneration or expenses in respect of any time when the person concerned was not disqualified from being a charity trustee or trustee for the charity.

*Remuneration of charity trustees and trustees etc.*

## **185 Remuneration of charity trustees or trustees etc. providing services to charity**

- (1) This section applies to remuneration for services provided by a person (“P”) to or on behalf of a charity where—
  - (a) P is a charity trustee or trustee for the charity, or
  - (b) P 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 (3).
- (2) If Conditions A to D are met in relation to remuneration within subsection (1), P is entitled to receive the remuneration out of the funds of the charity.

### *Condition A*

Condition A is that the amount or maximum amount of the remuneration—

- (a) is set out in an agreement in writing between the charity or its charity trustees (as the case may be) and P under which P 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 P of the services in question.

### *Condition B*

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 P to or on behalf of the charity for the amount or maximum amount of remuneration set out in the agreement.

### *Condition C*

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—

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- (a) a person in respect of whom an agreement within Condition A is in force,
- (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),

the total number of them constitute a minority of the persons for the time being holding office as charity trustees of the charity.

*Condition D*

Condition D is that the trusts of the charity do not contain any express provision that prohibits P from receiving the remuneration.

- (3) Nothing in this section applies to—
  - (a) any remuneration for services provided by a person in the person's 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—
    - (i) any provision contained in the trusts of the charity;
    - (ii) any order of the court or the Commission;
    - (iii) any statutory provision contained in or having effect under an Act other than this section.
- (4) Before entering into an agreement within Condition A the charity trustees must have regard to any guidance given by the Commission concerning the making of such agreements.
- (5) 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 Condition B.
- (6) For the purposes of Condition C an agreement within Condition A is in force so long as any obligations under the agreement have not been fully discharged by a party to it.
- (7) Sections 187 and 188 (interpretation) apply for the purposes of this section.

## **186 Disqualification of charity trustee or trustee receiving remuneration under s.185**

- (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 Condition A, 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 if an act is done by a person who is disqualified from doing it by virtue of subsection (2), the act is not invalid merely because of that disqualification.
- (4) If the Commission is satisfied—
  - (a) that a person (“P”) has done any act which P was disqualified from doing by virtue of subsection (2), and
  - (b) that P or a person connected with P 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) (as appropriate).

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- (5) An order under this subsection is one requiring P—
- (a) to reimburse to the charity the whole or part of the remuneration received as mentioned in subsection (4)(b);
  - (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 P or (as the case may be) the connected person is not to be paid the whole or part of the remuneration mentioned in subsection (4)(b).
- (7) If the Commission makes an order under subsection (5) or (6), P or (as the case may be) the 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 P to reimburse to the charity or (as the case may be) as it directs is not to be paid to P.
- (8) Sections 187 and 188 (interpretation) apply for the purposes of this section.

#### **187 Meaning of “benefit”, “remuneration”, “services” etc.**

In sections 185 and 186—

“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.

#### **188 Meaning of “connected person”**

- (1) For the purposes of sections 185 and 186, 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.

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- (2) Sections 350 to 352 (meaning of child, spouse and civil partner, controlled institution and substantial interest) apply for the purposes of subsection (1).

*Indemnity insurance for charity trustees and trustees*

**189 Indemnity insurance for charity trustees and trustees**

- (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—
    - (i) the charity (if it is a body corporate), or
    - (ii) any body corporate carrying on any activities on behalf of the charity.
- (2) But the terms of such insurance must be so framed as to exclude the provision of any indemnity for a person (“P”) in respect of—
- (a) any liability incurred by P 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 P in defending any criminal proceedings in which P is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by P, or
  - (c) any liability incurred by P to the charity that arises out of any conduct—
    - (i) which P knew (or must reasonably be assumed to have known) was not in the interests of the charity, or
    - (ii) in the case of which P did not care whether it was in the best interests of the charity or not.
- (3) For the purposes of subsection (2)(b)—
- (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.



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- (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) 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.

## **190 Power to amend s.189**

The Minister may by order make such amendments of section 189(2) and (3) as the Minister considers appropriate.

*Powers to relieve trustees and auditors etc. from liability*

## **191 Commission's power to relieve trustees and auditors etc. from liability**

- (1) This section applies to a person (“P”) 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 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 P is or may be personally liable for a breach of trust or breach of duty committed in P's capacity as a person within subsection (1)(a), (b) or (c), but
  - (b) that P 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 P wholly or partly from any such liability.
- (3) An order under subsection (2) 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 192—
- (a) subsection (1)(b) is to be read as including a reference to the Auditor General for Wales acting as auditor under Part 8, and
  - (b) subsection (1)(c) is to be read as including a reference to the Auditor General for Wales acting as examiner under Part 8;
- 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 1157 of the Companies Act 2006 (power of court to grant relief to officers or auditors of companies), or

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- (c) section 192 (which extends section 1157 to auditors etc. of charities which are not companies).

**192 Court's power to grant relief to apply to all auditors etc. of charities which are not companies**

- (1) Section 1157 of the Companies Act 2006 (power of court to grant relief to officers or auditors of companies) has 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.
- (2) This section applies to—
  - (a) a person acting in a capacity within section 191(1)(b) or (c) in a case where, apart from this section, section 1157 of the 2006 Act would not apply in relation to that person as a person so acting, and
  - (b) a charity trustee of a CIO.

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