

Charities (Regulation and Administration) (Scotland) Bill

[AS PASSED]

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Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Charities (Regulation and Administration) (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to modify certain aspects of the law relating to the regulation and administration of charities and their assets.

References to the 2005 Act

1 Meaning of the “2005 Act”

5 In this Act, the “2005 Act” means the Charities and Trustee Investment (Scotland) Act 2005.

Information about charity trustees etc.

2 Inclusion of names of charity trustees on the Scottish Charity Register

(1) The 2005 Act is modified as follows.

10 (2) In section 3 (Scottish Charity Register)—

(a) in subsection (3), after paragraph (a) insert—

“(aa) the name of each of its charity trustees,”

(b) for subsection (4) substitute—

15 “(4) Despite subsection (3)(aa) and (b), OSCR must exclude any information of the type specified in those provisions from a charity’s entry in the Register where—

(a) the information is the subject of an application for exclusion (whether as part of the application for the entry of a body in the Register or, subsequently, by a charity or any of its trustees), and

20 (b) OSCR is satisfied that including the information in the entry would be likely to jeopardise the safety or security of any person or premises.”

(3) In section 17(1) (notification of other changes)—

(a) in paragraph (a)(ii), for “of the charity trustee specified in the Register” substitute “specified in the Register in accordance with section 3(3)(b)”,

25 (b) in paragraph (b), at the end insert “(or which would, but for section 3(4), be so specified)”.

- (4) In section 71(b) (decisions), for “3(3)(b)” substitute “3(3)(aa) or (b)”.

3 Information about charity trustees for OSCR’s use

- (1) The 2005 Act is modified as follows.
- (2) In section 17(1) (notification of other changes), after paragraph (b), insert—
- 5 “(ba) any change in relation to its charity trustees which alters the answer to a question specified by OSCR under section 66A(3),”.
- (3) After section 66, insert—

“Information about charity trustees

66A Schedule of charity trustees

- 10 (1) OSCR must keep, in such manner as it thinks fit, a schedule of all charity trustees.
- (2) The schedule must contain a separate entry for each charity trustee entered in it setting out such information as OSCR considers appropriate.
- (3) OSCR must—
- 15 (a) specify the questions about charity trustees it will require answers to for the purpose of populating the schedule, and
- (b) publicise the questions so specified.
- (4) Section 22 applies to documents and information which OSCR requires in relation to a charity trustee’s entry in the schedule as it applies to documents and information which OSCR requires in relation to the charity’s entry in the Register.
- 20 (5) It does not matter whether a person continues to be a charity trustee for OSCR to be able to retain information about that person in the schedule, provided the retention of that information is calculated to facilitate, or is conducive or incidental to, the performance of OSCR’s functions.”.
- 25

Disqualification from being charity trustee etc.

4 Disqualification: offences

- (1) The 2005 Act is modified as follows.
- (2) In section 69 (disqualification from being charity trustee)—
- 30 (a) in subsection (2)(a)—
- (i) before sub-paragraph (i) insert—
- “*(ai)* an offence specified in section 69A,”
- (ii) in sub-paragraph (i), after “offence” insert “, not specified in section 69A,”
- (iii) sub-paragraph (ii) is repealed,
- 35 (b) in subsection (3), after “subsection (1)” insert “by reason of a conviction”.
- (3) After section 69, insert—

“69A Disqualification: specified offences

- (1) The following offences are specified for the purposes of section 69(2)(a)(ai)—
- (a) an offence under this Act,
 - (b) an offence under section 77 of the Charities Act 2011 (offence of contravening certain orders),
 - (c) an offence under section 13 or 19 of the Terrorism Act 2000 (wearing of uniform etc, and failure to disclose information),
 - (d) an offence specified under section 41 or 42 of the Counter-Terrorism Act 2008 as an offence to which Part 4 of that Act applies,
 - (e) a money laundering offence within the meaning of section 415 of the Proceeds of Crime Act 2002,
 - (f) an offence under any of the following provisions of the Bribery Act 2010—
 - (i) section 1 (bribing another person),
 - (ii) section 2 (offences related to being bribed),
 - (iii) section 6 (bribery of foreign public officials),
 - (iv) section 7 (failure of commercial organisations to prevent bribery),
 - (g) an offence of perverting the course of justice (by whatever means and however the offence is described), including in particular—
 - (i) false accusation of a crime,
 - (ii) perjury,
 - (iii) prevarication on oath,
 - (iv) prison breaking,
 - (v) subornation of perjury,
 - (h) an offence of wilful neglect of duty by a public official,
 - (i) an offence, under the law of England and Wales, of misconduct in public office.
- (2) An offence which has been superseded (whether directly or indirectly) by any offence specified in subsection (1) is also specified for the purposes of section 69(2)(a)(ai).
- (3) In relation to an offence specified in subsection (1) or (2), the following offences are also specified for the purposes of section 69(2)(a)(ai)—
- (a) an offence committed by aiding, abetting, counselling, procuring or inciting the commission of the offence,
 - (b) an offence committed by attempting or conspiring to commit the offence.
- (4) The Scottish Ministers may by regulations modify this section to add or remove an offence.”.
- (4) In section 103(5) (orders, regulations and rules), after paragraph (ca) (as inserted by section 5(5)), insert—

“(cb) regulations under section 69A(4),”.

5 Disqualification: other cases

(1) The 2005 Act is modified as follows.

(2) In section 69(2) (disqualification from being charity trustee)—

(a) in paragraph (b)—

- (i) the words “an undischarged bankrupt,” become sub-paragraph (i),
- (ii) in sub-paragraph (i) (as formed), after “bankrupt” insert “(see section 70(3))”,
- (iii) after sub-paragraph (i), insert—

“(ii) subject to a specified bankruptcy-related measure (see section 70(4)),”,

(b) for paragraph (d) substitute—

“(d) has been removed as a trustee, charity trustee, officer, agent or employee of a charity by a relevant order in England and Wales (see section 70(5)(a)),”,

(c) after paragraph (d), insert—

“(da) has been removed from the office of charity trustee or trustee for a charity by a relevant order in Northern Ireland (see section 70(5)(b)),

(db) is subject to an order made by the Charity Commission for England and Wales under section 181A of the Charities Act 2011 disqualifying the person in relation to all charities,”,

(d) after paragraph (e), insert—

“(f) has been found to be in contempt of court by a court in England or Wales in civil proceedings for making a false disclosure statement, or making a false statement in a document verified by a statement of truth, or causing (in either case) such a statement to be made,

(g) has been found guilty of disobedience to—

- (i) an order or direction of the Charity Commission for England and Wales on an application to the High Court of Justice in England and Wales under section 336(1) of the Charities Act 2011,
- (ii) an order of the Charity Commission for Northern Ireland on an application to the High Court of Justice in Northern Ireland under section 174 of the Charities Act (Northern Ireland) 2008,

(h) is a designated person for the purposes of—

- (i) regulations 8 to 12 of the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/466),
- (ii) regulations 11 to 15 of the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/573),
- (iii) regulations 11 to 15 of the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/577),

(i) is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.”.

(3) In section 69—

(a) at the end of subsection (1), insert “(but see also subsection (2A))”,

(b) after subsection (2), insert—

“(2A) Where—

(a) a person is subject to an order made by the Charity Commission for England and Wales under section 181A of the Charities Act 2011, and

(b) the order disqualifies the person in relation to a particular charity or type of charity,

the person is also disqualified from being a charity trustee in relation to that charity or type of charity.”,

(c) after subsection (3), insert—

“(3A) A person referred to in subsection (2)(f) is not disqualified under subsection (1) by reason of a finding of contempt which, if it had been a conviction for which the person was dealt with in the same way, would be a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974.”,

(d) in subsection (4), after “subsection (1)” insert “or (2A)”,

(e) after subsection (6), insert—

“(7) The Scottish Ministers may by regulations—

(a) modify this section so as to add or remove a person, or a description of a person, to or from the persons for the time being mentioned in or falling within this section as a person who is disqualified from being a charity trustee,

(b) modify the definitions in section 70 as Ministers consider appropriate in consequence of any modification of this section or otherwise.”.

(4) In section 70 (disqualification: supplementary)—

(a) in subsection (3), for “section 69(2)(b)” substitute “section 69(2)(b)(i)”,

(b) after subsection (3), insert—

“(4) For the purpose of section 69(2)(b)(ii), “specified bankruptcy-related measure” means—

(a) a bankruptcy restrictions order, interim order or undertaking under the Bankruptcy (Scotland) Act 2016, the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989,

(b) a debt relief restrictions order, interim order or undertaking under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (SI 1989/2405),

(c) a moratorium period under a debt relief order under either of those enactments.

(5) For the purposes of section 69(2)(d) and (da), a “relevant order” is—

(a) in England and Wales, an order made—

(i) by the Charity Commission for England and Wales under section 79(4) of the Charities Act 2011 or by the Commission or the

Charity Commissioners for England and Wales under a relevant earlier enactment, or

(ii) by the High Court of Justice in England and Wales,

on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible, or which the person knew of and failed to take any reasonable step to oppose, or which the person's conduct contributed to or facilitated,

(b) in Northern Ireland, an order made—

(i) by the Charity Commission for Northern Ireland under section 33(2)(i) of the Charities Act (Northern Ireland) 2008, or

(ii) by the High Court of Justice in Northern Ireland,

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

(6) In subsection (5)(a), a “relevant earlier enactment” means—

(a) section 79(2)(a) of the Charities Act 2011 (as in force before the commencement of sections 4 and 9 of the Charities (Protection and Social Investment) Act 2016),

(b) section 18(2)(i) of the Charities Act 1993 (power to act for protection of charities),

(c) section 20(1A)(i) of the Charities Act 1960, or

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

(5) In section 103(5) (orders, regulations and rules), after paragraph (c), insert—

“(ca) regulations under section 69(7).”.

6 Disqualification: senior management functions

(1) The 2005 Act is modified as follows.

(2) After section 69A (inserted by section 4(3)), insert—

“69B Disqualification from holding office with senior management functions

(1) While a person is disqualified by virtue of section 69 from acting as a charity trustee in relation to a charity, the person is also disqualified from holding an office or employment with senior management functions in the charity.

(2) But where a person is disqualified by virtue of section 69 from acting as a charity trustee in relation to a charity by reason of an order made by the Charity Commission for England and Wales under section 181A of the Charities Act 2011, the person is not disqualified under subsection (1) to the extent that the order does not apply—

(a) in relation to holding an office or employment with senior management functions in a charity, or

(b) in relation to a particular office or employment or to any office or employment of a particular description.

(3) OSCR may, on the application of a person disqualified under subsection (1), waive the disqualification either generally or in relation to a particular charity or type of charity.

(4) A waiver under subsection (3) may relate to a particular office or employment or to any office or employment of a particular description.

(5) OSCR must notify a waiver under subsection (3) to the person concerned.

(6) A function of an office or employment held by a person (“P”) is a senior management function if—

(a) it relates to the management of the charity, and P is not responsible for it to another officer or employee (other than a charity trustee), or

(b) it involves control over money and the only officer or employee (other than a charity trustee) to whom P is responsible for it is a person holding an office or employment with senior management functions other than ones involving control over money.”.

(3) In section 70 (disqualification: supplementary)—

(a) in subsection (1), in the opening words after “69” insert “, or (as the case may be) holds an office or employment with senior management functions in the charity while disqualified by virtue of section 69B,”,

(b) for subsection (2) substitute—

“(2) Any acts done—

(a) as a charity trustee by a person disqualified by virtue of section 69 from being a charity trustee, or

(b) by a person holding an office or employment with senior management functions in a charity while disqualified by virtue of section 69B from holding such an office or employment in the charity,

are not invalid by reason only of the disqualification.”.

(4) The title of Chapter 9 becomes “Charity trustees and senior managers”.

(5) In section 71 (decisions), after paragraph (p) insert—

“(pa) refuse to grant a waiver under section 69B(3),”.

(6) In section 72(2)(a) (notice of decisions), for “or (p)” substitute “, (p), (pa)”.

7 Record of persons removed from office

(1) The 2005 Act is modified as follows.

(2) In section 34(5)(ea) (powers of Court of Session)—

(a) for “purpose” substitute “purposes”,

(b) after “trustee” insert “and section 70ZA (record of persons removed from office)”.

(3) After section 70, insert—

“70ZA Record of persons removed from office

(1) OSCR must keep, in such manner as it thinks fit, a record of all persons who have been removed, by order of the Court of Session under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 or section 34 of this Act, from being concerned in the management or control of any body.

- (2) The record must contain a separate entry for each person entered in it setting out—
- (a) the person’s name,
 - (b) the date of the order of the Court of Session removing the person from being concerned in the management or control of the body,
 - (c) the name of the body to which the order relates,
 - (d) if the person has been granted a waiver under section 69(4) in relation to a particular charity or type of charity only, or has been granted a waiver under section 69B(3), the details of the waiver including—
 - (i) the date OSCR notified the person of the waiver, and
 - (ii) the extent of the waiver, and
 - (e) any other information which OSCR considers appropriate in relation to—
 - (i) the person,
 - (ii) the body from which the person was removed.
- (3) Despite subsection (1)—
- (a) OSCR must remove a person from the record if the person has been granted a general waiver under section 69(4),
 - (b) OSCR may remove a person from the record if the person has died.

70ZB Searching the record of removed persons

- (1) OSCR must provide a facility by which the record kept under section 70ZA(1) may be searched by any person.
 - (2) That search facility must allow the record to be searched by reference to, and only by reference to, a person’s name.
 - (3) Where, on an application being made to it, OSCR is satisfied that disclosing an entry in the record is likely to jeopardise the safety or security of any person or premises, OSCR must ensure that the entry is not disclosed to any person searching the record.
 - (4) OSCR may also determine other information which, though contained in the record, is not to be disclosed to any person searching it.”.
- (4) In section 71 (decisions), after paragraph (pa) (inserted by section 6(5)) insert—
- “(pb) refuse an application made for the purposes of section 70ZB(3).”.
- (5) In section 72(2)(a) (notice of decisions), after “(pa)” (inserted by section 6(6)) insert “or (pb)”.

Appointment of interim charity trustees

8 Appointment of interim trustees by OSCR

- (1) Section 70A (appointment of charity trustees) of the 2005 Act is modified as follows.
- (2) For subsections (1) and (2), substitute—

- “(1) OSCR may, on the request of a charity, appoint a person as an interim charity trustee for the charity where—
- (a) the charity has an insufficient number of charity trustees to be able to appoint a charity trustee under its constitution, and
 - 5 (b) the charity’s constitution does not provide a mechanism for appointing a charity trustee in such circumstances.
- (2) OSCR may, of its own accord or on the representation of any person, appoint a person as an interim charity trustee for a charity where OSCR is satisfied that—
- 10 (a) the charity has no existing charity trustees,
 - (b) all of the charity’s existing charity trustees either—
 - (i) cannot be found, or
 - (ii) are not acting and are not expected to resume acting, or
 - 15 (c) the number of the charity’s existing charity trustees who fall within sub-paragraph (i) or (ii) of paragraph (b) is such that the charity is unable to make a request under subsection (1).”.
- (3) In subsection (3)—
- (a) for “acting” substitute “interim”,
 - (b) after “subsection”, insert “(1) or”,
 - 20 (c) after “constitution” insert “without requiring involvement from charity trustees who cannot be found or are not acting”.
- (4) In subsection (4)—
- (a) for “acting” substitute “interim”,
 - (b) after “subsection” insert “(1) or”.
- 25 (5) In subsection (5)—
- (a) in paragraph (a)—
 - (i) the word “still” is repealed,
 - (ii) for “acting” substitute “interim”,
 - 30 (iii) after “constitution” insert “without requiring involvement from charity trustees who cannot be found or are not acting”,
 - (b) in paragraph (b), for “acting” substitute “interim”,
 - (c) in the closing words, for “acting” substitute “interim”.
- (6) After subsection (5), insert—
- 35 “(5A) For the purpose of subsection (5)(b), no account is to be taken of any charity trustees who cannot be found or are not acting.”.
- (7) In subsection (6)—
- (a) for “acting” substitute “interim”,
 - (b) after “subsection” insert “(1) or”.
- (8) In subsection (7), for “acting” substitute “interim”.
- 40 (9) In subsection (8), for “acting” in both places where it appears substitute “interim”.

(10) After subsection (8), insert—

“(9) For the purposes of subsection (1), a request is the request of a charity if it is from—

(a) the majority of the charity trustees of the charity, or

(b) if there are only two charity trustees of the charity, either of them.”.

8A Review of proposed appointment of interim trustee

(1) The 2005 Act is modified as follows.

(2) In section 71 (decisions), after paragraph (pa) (inserted by section 6(5)) insert—

“(paa) appoint an interim charity trustee under section 70A(1) or (2)(c).”.

(3) In section 72(2) (notice of decisions), after paragraph (ba) (inserted by section 14(3)(a)(ii)) insert—

“(bb) in the case of a decision referred to in paragraph (paa) of section 71, the charity trustees of the charity in respect of which the decision was made.”.

(4) In section 73(2) (effect of decisions), in the opening words, after “(o)” insert “, (paa)”.

(5) In section 74 (review of decisions), after subsection (1) insert—

“(1A) Where there is more than one charity trustee to whom notice of a decision referred to in section 71(paa) is given under section 72, a request under subsection (1) may be made by any of them.”.

Charity accounts

9 Preservation of and access to charity accounts and independent reports on accounts

(1) The 2005 Act is modified as follows.

(2) In section 44 (accounts)—

(a) in subsection (1)—

(i) after paragraph (c), insert—

“(ca) have the independent examiner or auditor make a report in respect of the examination or (as the case may be) audit (an “independent report on accounts”),”,

(ii) in paragraph (d), for the words “such examination or audit, send a copy of the” substitute “the independent report on accounts has been made, send a copy of the report and”,

(b) after subsection (4) insert—

“(4A) Regulations under subsection (4) must be framed so that a charity is not required to include any information in its statement of account that is excluded from its entry in the Register under section 3(4).”.

(3) After section 45A (inserted by section 11(4)), insert—

*“Access to charity accounts***45B Public access to charity accounts kept by OSCR**

(1) OSCR must—

(a) keep any copy of a statement of account and independent report on accounts sent to it under section 44(1)(d) for at least 5 years from the end of the financial year to which the document relates, and

(b) during the period for which the copy is so kept, make it available for public inspection—

(i) at all reasonable times at its principal office,

(ii) at such other places as it thinks fit, and

(iii) otherwise as it thinks fit.

(2) It is for OSCR to determine the manner in which copies of statements of account and independent reports on accounts are made available.

(3) OSCR must publicise the arrangements which it makes in pursuance of subsection (1)(b).”.

10 Independent reports: minor and consequential modifications

(1) The 2005 Act is modified as follows.

(2) In section 4(c)(iii) (application for entry in Register), after “(if any)” insert “and any associated reports forming part of the same document”.

(3) In section 23(1) (entitlement to information about charities)—

(a) in paragraph (b), after “account” insert “and independent report on accounts”,

(b) in the closing words, after “account” insert “and independent report on accounts”.

(4) In section 44(4)(g) (accounts), at the end insert “(including matters relating to the independent report on accounts)”.

(5) In section 106 (general interpretation), after the definition of “the First-tier Tribunal” insert—

““independent report on accounts” has the meaning given in section 44(1)(ca).”.

11 Removal of non-responsive charities for failure to submit accounts

(1) The 2005 Act is modified as follows.

(2) In section 3(3)(e)(ii) (Scottish Charity Register), after “31(4)” insert “or 45A(2)”.

(3) The heading of section 45 becomes “Failure to provide statement of account: preparation by appointed person”.

(4) After section 45, insert—

“45A Failure to provide statement of account: removal from Register

(1) This section applies where—

(a) a charity has failed to send a copy of its statement of account to OSCR in pursuance of section 44(1)(d),

- (b) the time by which the statement was due to be sent to OSCR by virtue of provision made under section 44(4)(f) has passed,
- (c) the charity has not responded to communications from OSCR in respect of the failure, and
- 5 (d) a statement of account has not been prepared, and is not being prepared, under section 45.
- (2) OSCR may give the charity notice of its intention to remove the charity from the Register.
- 10 (3) Unless the charity makes contact with OSCR within 3 months of the date on which notice under subsection (2) is given, OSCR may remove the charity from the Register.
- (4) A notice under subsection (2) must set out—
- (a) that the notice has been given because the criteria in paragraphs (a) to (d) of subsection (1) have been met, and
- 15 (b) that the charity may be removed from the Register unless it makes contact with OSCR within the period specified in subsection (3).
- (5) OSCR—
- (a) must publish on its website a list of charities to which a notice under subsection (2) has been issued and remains in effect,
- 20 (b) may take such further steps as appear to it to be appropriate with a view to bringing the giving of a notice under subsection (2) to the attention of persons likely to be affected by it.
- (6) In relation to a SCIO, the power in subsection (3) to remove a charity from the Register is a power to take steps in accordance with regulations made under section 64(1)(d) to secure the dissolution of the SCIO and, following such dissolution, to remove it from the Register.”
- 25 (5) In section 71 (decisions), after paragraph (ma), insert—
- “(mb) remove a charity from the Register under section 45A(3).”
- 30 (6) In section 73(2) (effect of decisions), in the opening words, after “(id),” (inserted by section 15(11)), insert “(mb).”

Charity mergers

12 Recording of charity mergers and treatment of legacies

- (1) The 2005 Act is modified as follows.
- (2) After section 64, insert—

“CHAPTER 7A

CHARITY MERGERS

64A Meaning of “charity merger” etc.

- (1) This section applies for the interpretation of sections 64B to 64E.

- (2) A “charity merger” means a scheme in which—
- (a) either—
 - (i) all the property, rights and liabilities of one or more charities (a “transferor”) are transferred to another charity (the “transferee”),
or
 - (ii) two or more charities (“transferors”) are amalgamated and all the property, rights and liabilities of both or all of them are transferred to a new charity (the “transferee”), and
 - (b) the transferor (or transferors) is (or are) wound up or dissolved, or is (or are) to be wound up or dissolved, in connection with the scheme.
- (3) A reference (however expressed) to—
- (a) a transferor under a charity merger is a reference to a transferor within the meaning of subsection (2),
 - (b) a transferee under a charity merger is a reference to—
 - (i) the transferee within the meaning of subsection (2), if it is a company or other body corporate,
 - (ii) otherwise, the charity trustees of the transferee (within the meaning of subsection (2)).

64B Notification of charity mergers

- (1) A transferee under a charity merger may give OSCR notice of the merger at any time after all the property, rights and liabilities of the transferor (or of all of the transferors, where there is more than one) under the merger are transferred to the transferee.
- (2) A notice under subsection (1) must—
- (a) include such documents and information, and
 - (b) be given in such form and manner,
- as OSCR may require.
- (3) OSCR must publicise any requirements set under subsection (2).
- (4) The Scottish Ministers may by regulations make provision about the circumstances in which, and the time at which, notice of the merger is to be treated as having been given.

64C Record of charity mergers

- (1) OSCR must keep, in such manner as it thinks fit, a record of all charity mergers notified to it in accordance with section 64B.
- (2) The record of charity mergers must contain a separate entry for each charity merger setting out—
- (a) the date notice of the merger was given to OSCR,
 - (b) any other information which OSCR considers appropriate in relation to the merger.

- (3) Section 22 applies to documents and information which OSCR requires in relation to an entry in the record of charity mergers which relates to the charity as it applies to documents and information which OSCR requires in relation to the charity's entry in the Register.
- 5 (4) In this section and sections 64D and 64E, "the record of charity mergers" means the record kept under subsection (1).

64D Legacies: effect of charity merger being notified

- (1) This section applies where—
- 10 (a) a person (the "testator") by will bequeaths a legacy to a charity,
- (b) the charity to which the legacy is bequeathed becomes a transferor under a charity merger,
- (c) the transferor either—
- 15 (i) acquires a vested right in the legacy, or
- (ii) does not acquire a vested right in the legacy by reason only of the transferor having wound up or dissolved in connection with the merger, and
- (d) notice of the merger was given in accordance with section 64B before the date on which the transferor acquires or (as the case may be) would, but for winding up or dissolving, have acquired the vested right in the legacy.
- 20 (2) The legacy is to be treated as having vested in the transferee under the merger unless it is clear from the terms of the will that the testator intended otherwise.
- (3) Without prejudice to the generality of subsection (2)—
- 25 (a) it is to be regarded as clear from the terms of the will that the testator intended otherwise if the will provides expressly that the legacy is not to be paid to a transferee under a charity merger,
- (b) it is not to be regarded as clear from the terms of the will that the testator intended otherwise only by reason of the will providing that the legacy is bequeathed—
- 30 (i) to the charity, which failing to another person (or persons),
- (ii) to the charity and another person (or persons) and to whichever of them is still in existence or, as the case may be, is the survivor (or survivors) of them.
- (4) Where the legacy is bequeathed to more than one person, the share of it which is to be treated as having vested in the transferee is the share that has vested or (as the case may be) would, but for winding up or dissolving, have vested in the transferor.
- 35 (5) Subsection (6) applies where—
- (a) the transferee ("Charity A") becomes the transferor under a further merger, and
- 40

(b) notice of the further merger was given in accordance with section 64B before the date on which either—

(i) the legacy was treated as having vested in Charity A by virtue of subsection (2), or

(ii) the legacy would have been treated as having vested in Charity A by virtue of subsection (2) but for Charity A having been wound up or dissolved in connection with the further merger.

(6) The legacy is to be treated as having vested in the transferee under the further merger (and so on).

(7) In this section, a “will” means any document of a testamentary nature and includes a reference to—

(a) a testamentary trust disposition and settlement,

(b) a codicil.

64E Public access to the record of charity mergers

(1) OSCR must make the record of charity mergers available for public inspection—

(a) at all reasonable times at its principal office,

(b) at such other places as it thinks fit, and

(c) otherwise as it thinks fit.

(2) It is for OSCR to determine the form and manner in which the record of charity mergers is made available; but in doing so OSCR must ensure that the information in the record is made reasonably obtainable.

(3) OSCR must publicise the arrangements which it makes in pursuance of subsection (1).”.

(3) It does not matter if the will (within the meaning given in section 64D(7) of the 2005 Act) which gives rise to the legacy was executed before the date the amendment made by this section comes into force.

Reorganisation of charities

12A Endowments

(1) The 2005 Act is modified in accordance with subsections (2) and (3).

(2) In section 42 (reorganisation: supplementary), for subsections (6) and (7) substitute—

“(6) But, despite subsection (5), sections 39 and 40 apply—

(a) to any endowment held by such a charity,

(b) where the property of a charity constituted under an enactment consists only of an endowment or endowments, to the charity.

(7) Where an application for a reorganisation scheme is made by virtue of subsection (6)(a)—

(a) a reference in section 39(1)(a) or 40(1)(a) to a condition being satisfied in relation to a charity is to be read as a reference to a condition being satisfied in relation to an endowment,

- (b) the reference in section 41 to a charity’s constitution is to be read as including a reference to an instrument governing an endowment,
- (c) a reference in subsection (2) or (3)(a) to the purposes of a charity is to be read as a reference to the purposes of an endowment,
- 5 (d) a reference in subsection (2)(c) or (d) or (3)(a) to a charity’s constitution is to be read as a reference to—
- (i) a charity’s constitution as it relates to an endowment,
- (ii) an instrument governing an endowment,
- 10 (e) the references in subsection (3)(c) to a charity are to be read as references to an endowment.
- (8) Where an application for a reorganisation scheme is made by virtue of subsection (6)(b), a reference in section 41 or in subsection (2)(c) or (d) or (3)(a) to a charity’s constitution is to be read as including a reference to an instrument governing an endowment.
- 15 (9) For the purposes of subsections (6) to (8)—
- (a) “endowment” has the same meaning as in Part 6 (reorganisation of endowments) of Education (Scotland) Act 1980,
- (b) for the avoidance of doubt, income derived from an endowment is to be treated as being part of the endowment.
- 20 (10) The Scottish Ministers may by regulations—
- (a) modify this section so as to amend the meaning of “endowment”,
- (b) disapply subsection (6) in relation to any charity or endowment, or type of charity or endowment, specified in the regulations.”.
- 25 (3) In section 103(5) (orders, regulations and rules), after paragraph (ba) (inserted by section 16(8)(b)), insert—
- “(bb) regulations under section 42(10).”.
- (4) The Education (Scotland) Act 1980 is modified in accordance with subsection (5).
- 30 (5) In section 122(4) (interpretation of Part 6), for “the governing body of which is a charity within the meaning of section 106” substitute “which may be reorganised by virtue of section 42(6)”.

Inquiries

13 Inquiries about former charities etc.

- (1) Section 28 (inquiries about charities etc.) of the 2005 Act is modified as follows.
- 35 (2) In subsection (1), in paragraph (e), for the words from “which” to the end substitute “as a charity despite that body not being entered in the Register,”.
- (3) After subsection (2), insert—
- “(2A) It does not matter whether a charity, body or person continues to fall within a paragraph of subsection (1), or continues to exist, for OSCR to be able to make inquiries under that subsection (but see subsection (4A)).”.
- 40 (4) After subsection (4), insert—

“(4A) Where inquiries are made by virtue of subsection (2A) into a charity, body or person which no longer falls within a paragraph of subsection (1)—

(a) the inquiries must relate to the period or periods in which the charity, body or person fell within one or more paragraphs of subsection (1), and

(b) no direction may be given under subsection (3),

unless the inquiries or, as the case may be, the direction relates to the application of protected charitable assets (see section 19).”.

14 Notice and obtaining information

(1) The 2005 Act is modified as follows.

(2) In section 29 (power of OSCR to obtain information for inquiries)—

(a) in subsection (1), the words “by notice” are repealed,

(b) in subsection (2), for the opening words substitute “Where OSCR makes such a requirement, it must give a notice to the person specifying—”,

(c) after subsection (2), insert—

“(2A) But OSCR must not give notice under subsection (2) unless and until the decision to make the requirement under subsection (1) has effect (see section 73(3)).”.

(3) In section 72 (notice of decisions)—

(a) in subsection (2)—

(i) in paragraph (a)—

(A) after “(k),” insert “(l),”

(B) after “the”, in second place where it occurs, insert “charity, body or”,

(ii) after paragraph (b), insert—

“(ba) in the case of a decision referred to in paragraph (h) of section 71, the charity, body or person with regard to which OSCR is making inquiries under section 28,”

(iii) in paragraph (c), for “that section” substitute “section 71”,

(b) after subsection (3), insert—

“(4) For the purposes of subsection (2)(ba)—

(a) if OSCR is making inquiries into a body in relation to a period in which the body was a charity, the notice is to be given to the body as required by subsection (2)(ba), but

(b) if the charity or (as the case may be) body to which notice is to be given has ceased to exist, the notice must be given, to the extent that it is reasonably practicable to do so—

(i) in the case of a charity, to each person who was a charity trustee of the charity immediately before it ceased to exist,

(ii) in the case of a body, to each person who appears to the person giving the notice to have been concerned in the management or control of the body immediately before it ceased to exist.”.

- (4) In section 73(3) (effect of decisions), in the opening words, for “the notice” substitute “any notice”.

15 Ability to issue positive directions

- (1) The 2005 Act is modified as follows.
- (2) In section 3(3)(e)(i) (Scottish Charity Register), after “30A(2)” (inserted by section 16(2)) insert “, 30B(2)”.
- (3) After section 30A (inserted by section 16(4)), insert—

“30B Powers of OSCR following inquiries: direction to take specified steps

- (1) This section applies 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) OSCR may direct the charity or body to take, within such period as may be specified in the direction, such steps (specified in the direction) as OSCR considers to be expedient in the interests of the charity.

- (3) The power of OSCR to give a direction under subsection (2) includes the power to—

(a) vary the direction, but only by—

(i) extending the time period specified in the direction,

(ii) removing steps which the charity or body is required to take,

(b) revoke the direction,

(c) give more than one direction under that subsection in respect of the same inquiries (in addition to any direction that may be given under section 31).

- (4) A direction under subsection (2)—

(a) may require steps to be taken whether or not they would otherwise be within the powers exercisable by the charity or body, but

(b) may not require any steps to be taken which are—

(i) prohibited by any enactment,

(ii) expressly prohibited by the constitution of the charity or (as the case may be) body, or

(iii) inconsistent with the charity’s purposes.

- (5) Anything done by a charity or body under the authority of a direction under subsection (2) is to be treated as properly done in the exercise of the powers exercisable by it.

- (6) Subsection (5) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such a direction.”.
- 5 (4) The heading of section 31 becomes “Powers of OSCR following inquiries: temporary suspension or restriction of conduct”.
- (5) In section 32(2) (suspensions and directions: procedure)—
- (a) the words “a further suspension or direction may be made or given under section 31 but” become paragraph (a),
- 10 (b) in paragraph (a) (as formed), after “section 31” insert “(in addition to any direction that may be given under section 30B),”,
- (c) the words from “the further suspension” to the end become paragraph (b),
- (d) in paragraph (b) (as formed), after “direction” in the first place where it occurs, insert “under section 31”.
- 15 (6) The heading of section 32 becomes “Suspensions and directions under section 31: procedure”.
- (7) In section 33(1)(a) (reports on inquiries), after sub-paragraph (ia) (inserted by section 16(5)) insert—
- “(ib) gives a direction under section 30B,”.
- (8) In section 65(4) (designated religious charities), after “section 28(3),” insert—
- 20 “section 30B,”.
- (9) In section 71 (decisions), after paragraph (ic) (inserted by section 16(6)), insert—
- “(id) give a direction under section 30B(2),”.
- (10) In section 72(2)(a) (notice of decisions), after “(g),” insert “(id),”.
- 25 (11) In section 73(2) (effect of decisions), in the opening words, after “(ic),” (inserted by section 16(7)) insert “(id),”.

Connection to Scotland

16 Charities which it is not appropriate for OSCR to regulate

- (1) The 2005 Act is modified as follows.
- (2) In section 3(3)(e)(i) (Scottish charity Register), after “30(1)” insert “, 30A(2)”.
- 30 (3) In section 5 (determination of applications)—
- (a) in subsection (2), after paragraph (a), insert—
- “(aa) it considers that it would not be appropriate for it to regulate the applicant because the applicant has or will have no or negligible connection to Scotland,”,
- 35 (b) after subsection (3) (inserted by paragraph 3 of the schedule), insert—
- “(4) For the purpose of subsection (2)(aa), in considering, in all the circumstances, what connection (if any) the applicant has or will have to Scotland, OSCR must have regard to the following factors—
- (a) whether the applicant has (or intends to have) a principal office in
- 40 Scotland,

- (b) whether the applicant occupies (or intends to occupy) any land or premises in Scotland,
- (c) whether the applicant carries out (or intends to carry out) activities in any office, shop or similar premises in Scotland,
- (d) whether the applicant is established under the law of Scotland,
- (e) whether any of the persons who are (or are to be) concerned in the management or control of the applicant are resident in Scotland,
- (f) any other relevant factor.

(5) The Scottish Ministers may by regulations modify this section to make provision about the factors which are or are not relevant for the purpose of subsection (2)(aa).”.

(4) After section 30, insert—

“30A Removal from Register where charity no longer has connection to Scotland

(1) This section applies where, as a result of inquiries under section 28, OSCR considers that it would not be appropriate for it to continue to regulate a charity because the charity has no or negligible connection to Scotland.

(2) OSCR must direct the charity to take, within such period as may be specified in the direction, such steps (specified in the direction) as OSCR considers necessary for the purposes of establishing a connection to Scotland which is more than negligible.

(3) The power of OSCR to give a direction under subsection (2) includes the power to—

- (a) vary the direction, but only by—
 - (i) extending the time period specified in the direction, or
 - (ii) removing steps which the charity is required to take, or
- (b) revoke the direction.

(4) OSCR must, if a charity fails to comply with a direction under subsection (2), remove the charity from the Register.

(5) For the purpose of subsection (1), in considering, in all the circumstances, what connection (if any) the charity has to Scotland, OSCR must have regard to the following factors—

- (a) whether the charity has a principal office in Scotland,
- (b) whether the charity occupies any land or premises in Scotland,
- (c) whether the charity carries out activities in any office, shop or similar premises in Scotland,
- (d) whether the charity is established under the law of Scotland,
- (e) whether any of the charity trustees of the charity are resident in Scotland,
- (f) any other relevant factor.

(6) The Scottish Ministers may by regulations modify this section to make provision about the factors which are or are not relevant for the purpose of subsection (1).”.

(5) In section 33(1)(a) (reports on inquiries), after sub-paragraph (i) insert—

“(ia) gives a direction under section 30A,”.

(6) In section 71 (decisions), after paragraph (ia), insert—

“(ib) give a direction under section 30A(2),

(ic) remove a charity from the Register under section 30A(4),”.

(7) In section 73(2) (effect of decisions), in the opening words, after “(ia),” insert “(ib), (ic),”.

(8) In section 103(5) (orders, regulations and rules)—

(a) before paragraph (a), insert—

“(za) regulations under section 5(5),”

(b) after paragraph (b), insert—

“(ba) regulations under section 30A(6),”.

Further modification of the 2005 Act

17 Minor or technical amendments

The schedule further modifies the 2005 Act.

Final provisions

18 Ancillary provision

(1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.

(2) Regulations under this section may—

(a) make different provision for different purposes,

(b) modify any enactment (including this Act).

(3) Regulations under this section—

(a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,

(b) otherwise, are subject to the negative procedure.

19 Commencement

(1) This section and sections 18 and 20 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

(3) Regulations under this section may—

(a) include transitional, transitory or saving provision,

(b) make different provision for different purposes.

20 Short title

The short title of this Act is the Charities (Regulation and Administration) (Scotland) Act 2023.

SCHEDULE
(introduced by section 17)

FURTHER MODIFICATION OF THE 2005 ACT

Annual reports by OSCR: action taken to promote awareness and understanding of the 2005 Act

- 5 A1(1) Section 2 (annual reports) of the 2005 Act is modified as follows.
- (2) After subsection (1), insert—
- “(1A) A general report must include information about what action OSCR has taken during that year to promote charities’ awareness and understanding of what they need to do to comply with the provisions of this Act.”.
- 10 (3) In subsection (3), for “It” substitute “Subject to subsection (1A), it”.

Duty to review Register

- 1 (1) Section 3 (Scottish Charity Register) of the 2005 Act is modified as follows.
- (2) In subsection (6)—
- (a) in the opening words, the word “must” is repealed,
- 15 (b) in paragraph (a)—
- (i) at the beginning, insert “may, ”,
- (ii) for “each”, substitute “any”,
- (c) at the beginning of paragraph (b), insert “must, ”.

Removal of former bodies

- 20 2 (1) Section 3 (Scottish Charity Register) of the 2005 Act is modified as follows.
- (2) In subsection (6)—
- (a) after paragraph (a), the word “and” is repealed,
- (b) after paragraph (b), insert “, and
- 25 (c) must, if an entry is in respect of a body which has ceased to exist, remove the entry.”.

Ability to allow duplicate charity names as part of merger

- 3 (1) The 2005 Act is modified as follows.
- (2) In section 5 (determination of applications), after subsection (2), insert—
- “(3) Despite subsection (2)(a), where—
- 30 (a) an applicant’s name falls within section 10 only because it is the same as, or too like, the name of a charity, and
- (b) the application for entry in the Register is being made as part of a proposed charity merger (within the meaning of section 64A(2)) involving that charity,

OSCR is entitled, but not required, to refuse to enter the applicant on the grounds of the applicant's name.”.

- (3) In section 12 (power of OSCR to require charity to change name), after subsection (3), insert—

5 “(3A) But, for the purposes of subsection (3)(a), where—

- (a) a charity's name falls within section 10 only because it is the same as, or too like, the name of another charity, and
- (b) one of the charities was entered in the Register with that name by virtue of section 5(3),

10 OSCR may direct either one or both of the charities to change its name under subsection (3)(a) only if OSCR is satisfied that it is no longer appropriate for the names to be the same or so alike.”.

Change of name: delaying decision or granting or refusing consent

- 4 (1) The 2005 Act is modified as follows.

- 15 (2) In section 11 (change of name)—

- (a) in subsection (3)—

(i) for “, directs the charity not to change its name,” substitute “—

- (a) refuses its consent, or
- (b) directs the charity not to change its name to that proposed new name for a period of not more than 6 months specified in the direction,”,

(ii) the words “OSCR is to be taken as having given its consent.” become the closing words,

- (b) after subsection (3), insert—

25 “(3A) A direction under subsection (3)(b)—

- (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.

(3B) Where OSCR gives such a direction it must, after making such inquiries as it thinks fit—

- (a) give its consent, whether or not subject to conditions, or
- (b) refuse its consent.”,

- (c) in subsection (4)—

(i) the words “it considers that the proposed new name falls within section 10” become paragraph (a),

35 (ii) after paragraph (a) (as formed), insert “, or

(b) it is unable, after making reasonable inquiries, to satisfy itself that the proposed new name does not fall within section 10.”,

- (d) after subsection (4), insert—

“(5) OSCR may, at the request of a charity, grant consent to a different proposed new name than that specified by the charity in the notice given by it under subsection (2).”.

(3) In section 71 (decisions), for paragraph (c) substitute—

“(c) refuse to consent to a charity changing name under section 11.”.

Oversight in relation to working names

(1) The 2005 Act is modified as follows.

(2) In section 3(3)(e)(i) (Scottish Charity Register), after “12(2)” insert “, (2A)”.

(3) In section 10 (objectionable names)—

(a) in subsection (1), paragraph (a), after “name” insert “or working name”,

(b) after subsection (2), insert—

“(3) Nothing in this section, or in any of sections 5(2)(a), 11(4), 12(3), 54(4)(a) or 57(3)(a), requires OSCR to undertake any investigation into the working name of a charity.”.

(4) In section 12 (power of OSCR to require charity to change name)—

(a) in subsection (1), for “of” to the end substitute “or working name of another charity is the same as or too like its name or working name, request OSCR to conduct a review.”,

(b) after subsection (2), insert—

“(2A) OSCR may, if satisfied following such a review that the working name of a charity (“charity A”) is the same as or too like the name or working name of another charity (“charity B”), as appropriate—

(a) direct charity B to change its name,

(b) direct either one or both of the charities to stop using its working name within such period as may be specified in the direction.”,

(c) for subsection (3), substitute—

“(3) At any other time—

(a) where OSCR considers that a charity's name falls within section 10, it must direct the charity to change its name,

(b) where OSCR considers that a charity's working name is objectionable, it may direct the charity to stop using that working name within such period as may be specified in the direction.”,

(d) after subsection (3A) (inserted by paragraph 3), insert—

“(3B) A direction under this section—

(a) may be revoked at any time,

(b) may be varied, but only by extending the period specified in it.”,

(e) in subsection (4), after “this section” insert “to change name”,

(f) in subsection (5), after “direction” insert “to change name”,

(g) after subsection (5), insert—

“(6) For the purposes of subsection (3)(b), a charity’s working name is objectionable where it would, if it were the charity’s name, fall within section 10(1).”.

(5) The heading of section 12 becomes “Power of OSCR in relation to charity names and working names”.

(6) In section 71 (decisions)—

(a) in paragraph (d), after “12(2)” insert “, (2A)”,

(b) in paragraph (e), after “12(2)” insert “or (2A)”.

(8) In section 106 (general interpretation), after the definition of “SCIO”, insert—

““working name”, in relation to a charity, means a name that is not the charity’s name but which is used to identify the charity and under which it carries out activities.”.

Giving notice to OSCR: removal of 42 day rule

5A(1) The 2005 Act is modified as follows.

(2) In section 11 (change of name), in subsection (2), the words “, not less than 42 days before doing so,” are repealed.

(3) In section 16 (changes which require OSCR’s consent), in subsection (4)—

(a) the words “, not less than 42 days before the date on which the action is to be taken,” are repealed,

(b) the words “specifying that date” are repealed.

Consent to and notification of changes

6 (1) The 2005 Act is modified as follows.

(2) In section 16 (changes which require OSCR’s consent), at the end of subsection (4), insert “(unless the action is one for which, by virtue of subsection (3), consent under subsection (1) is not required).”.

(3) In section 17 (notification of other changes), for subsection (2), substitute—

“(2) Paragraphs (c) and (d) of subsection (1) are subject to section 16.”.

(4) The heading of section 17 becomes “Notification of changes”.

Removal from Register: protection of assets

7 (1) Section 19 (removal from register: protection of assets) of the 2005 Act is modified as follows.

(2) For subsection (1) substitute—

“(1) A body removed from the Register (under section 18 or otherwise) continues to be under a duty to apply its protected charitable assets—

(a) in accordance with its charitable purposes as set out in its entry in the Register immediately before its removal (its “most recent purposes”), and

(b) to provide public benefit in Scotland or elsewhere.

(1A) In this section, “protected charitable assets” means—

- (a) any property acquired, or any property representing property acquired, before the body was removed from the Register,
- (b) any property representing income which accrued before the body was removed from the Register, and
- (c) the income from any such property.

(1B) The application of protected charitable assets in accordance with a body’s most recent purposes is not to be presumed to be for the public benefit.

(1C) In determining whether a body is applying its protected charitable assets for public benefit, section 8(2) applies subject to the modifications in subsection (1D).

(1D) The modifications are that—

- (a) in the opening words, the reference to determining whether a body provides or intends to provide public benefit is to be read as if it were a reference to determining whether a body is applying its protected charitable assets for public benefit,
- (b) in the closing words of paragraph (a), the reference to the consequence of the body exercising its functions is to be read as if it were a reference to the consequence of the body applying its protected charitable assets.”.

(3) In subsection (2), for “property and income referred to in subsection (1)” substitute “its protected charitable assets”.

(4) In subsection (4), for “property or income” substitute “protected charitable assets”.

(5) In subsection (5)—

(a) in paragraph (a)—

- (i) for “property or income”, in both places where it occurs, substitute “protected charitable assets”,
- (ii) before “purposes” insert “charitable”,

(b) in paragraph (b), for “property and income” substitute “protected charitable assets”.

(6) In subsection (7)—

- (a) for “property or income”, in the first place where it occurs, substitute “protected charitable assets”,
- (b) for “that property or income” substitute “the protected charitable assets”.

Provision of documents: period for compliance

8 (1) Section 23 (entitlement to information about charities) of the 2005 Act is modified as follows.

(2) In subsection (1), the words “in such form as the person may reasonably request” are repealed.

(3) After subsection (1), insert—

“(1A) Where a person is entitled to a copy document under subsection (1), the person is entitled to be given it—

- (a) within 28 days of the date on which the request is received by the charity, and
- (b) in such form as the person may reasonably request.”.

Disclosure of information by and to designated religious charities

8A(1) The 2005 Act is modified as follows.

(2) The heading of section 24 becomes “Disclosure of information by and to OSCR: public bodies or office-holders”.

(3) After section 24, insert—

“24A Disclosure of information by and to OSCR: designated religious charities

(1) OSCR may disclose any information to a designated religious charity—

- (a) for any purpose connected with the exercise of OSCR’s functions, or
- (b) for the purpose of enabling or assisting the charity in relation to the exercise of any supervisory or disciplinary functions in respect of the component parts of the charity.

(2) A designated religious charity may disclose any information to OSCR for the purpose of enabling or assisting OSCR to exercise any functions.”.

(4) In section 25 (removal of restrictions on disclosure of certain information)—

(a) in subsection (1), after paragraph (b) insert—

“(ba) OSCR from disclosing any information to a designated religious charity for—

- (i) any purpose connected with the exercise of OSCR’s functions,
- (ii) the purpose of enabling or assisting that charity in relation to the exercise of any supervisory or disciplinary functions in respect of the component parts of the charity,

(bb) a designated religious charity from disclosing any information to OSCR for the purpose of enabling or assisting OSCR to exercise any functions,”,

(b) after subsection (2), insert—

“(3) Nothing in this section authorises the making of a disclosure that contravenes the data protection legislation (but in determining whether a disclosure would do so, the provision made in this Act enabling or requiring the disclosure of information as mentioned in paragraphs (a) to (e) of subsection (1) is to be taken into account).

(4) In this section, “the data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018.”.

Retention of accounting records

9 (1) Section 44 (accounts) of the 2005 Act is modified as follows.

(2) In subsection (2), for “in which they are made” substitute “to which they relate”.

(3) After subsection (2), insert—

5 “(2A) Where the charity ceases to be a charity before the end of the period mentioned in subsection (2), the records must be preserved for the remainder of that period by—

(a) the body which was the charity, or

(b) where that body ceases to exist, a person notified to OSCR who, immediately before it ceased to exist, was—

10 (i) a charity trustee of the charity, or

(ii) where the body was not a charity at that time, concerned in the management or control of the body.”.

(4) In subsection (3), for “Subsection (2) is” substitute “Subsections (2) and (2A) are”.

Ability to appoint person to prepare statement of account

15 10 (1) Section 45 (failure to provide statement of account) of the 2005 Act is modified as follows.

(2) For subsection (1), substitute—

“(1) This section applies where—

(a) a charity has failed to send a copy of its statement of account to OSCR in pursuance of section 44(1)(d), and

20 (b) the time by which the statement was due to be sent to OSCR by virtue of provision made under section 44(4)(f) has passed.”.

Reports from auditors etc.

11 (1) Section 46 (duty of auditors etc. to report matters to OSCR) of the 2005 Act is modified as follows.

25 (2) In subsection (2), in the closing words, after “report” insert “in writing”.

Annual returns

12 (1) The 2005 Act is modified as follows.

(2) After section 48, insert—

“Duty to submit annual return

30 **48A Annual returns**

(1) A charity must prepare for each of its financial years an annual return in such form, and containing such information, as may be required by OSCR.

35 (2) Such a return must be sent to OSCR by the date by which the charity is, by virtue of provision made under section 44(4)(f), required to send OSCR a copy statement of account in respect of the financial year in question.

(3) OSCR must publicise any requirements set under subsection (1).”.

SCIO documents

13 (1) Section 52 (name and status) of the 2005 Act is modified as follows.

(2) After subsection (3), insert—

5 “(3A) Regulations under subsection (1) may also require such other information as may be specified in the regulations to be stated in legible characters in the documents referred to in that subsection.

(3B) Such regulations may—

(a) exempt SCIOs, or SCIOs of a particular type, from any of the requirements imposed by virtue of subsection (3A),

10 (b) provide that any statement required may, in the case of documents which are otherwise wholly or mainly in a language other than English, be made in that other language.”.

(3) The heading of the section becomes “References in SCIO documents”.

Conversion of charity which is a company or registered society

15 13A(1) Section 56 (conversion of charity which is a company or registered friendly society: applications) of the 2005 Act is modified as follows.

(2) In subsection (1)(b), “(c.12)” is repealed.

(3) The heading of the section becomes “Conversion of charity which is a company or registered society: applications”.

20 *Existing powers to make secondary legislation*

14 (1) The 2005 Act is modified as follows.

(2) In section 64 (regulations relating to SCIOs)—

(a) the existing text becomes subsection (1),

(b) after subsection (1) (as formed), insert—

25 “(2) Regulations under subsection (1) may add to, replace or omit any part of the text of an Act (including this Act).”.

(3) In section 102(b) (ancillary provision), at the end insert “or any provision made under it”.

(4) In section 103 (orders, regulations and rules)—

30 (a) in subsection (3), at the end insert “(including this Act)”,

(b) in subsection (4), for paragraphs (a) to (f) substitute—

“(a) an order, regulations or rules specified in subsection (5),

(b) an order under section 107(2).”,

(c) in subsection (5), for paragraph (c) substitute—

35 “(c) regulations under section 64(1)—

(i) made by virtue of paragraph (d) of that section, or

- (ii) containing provisions which add to, replace or omit any part of the text of an Act.”.

Trustee remuneration

15 (1) The 2005 Act is modified as follows.

5 (2) In section 67 (remuneration for services)—

(a) in subsection (2), for paragraph (b) substitute—

“(b) is connected with a person who provides such services,”,

(b) in subsection (4)(c), for “charity trustee who falls within sub-paragraph (a) or (b)” substitute “person who is party to an agreement or entitled to receive remuneration as mentioned in paragraph (a) or (b)”.

10 (3) In section 68(2)(b) (remuneration: supplementary), after “spouse” insert “or civil partner”.

Notices

16 (1) Section 100 of the 2005 Act (notices, applications etc.) is modified as follows.

(2) After subsection (5), insert—

15 “(5A) Subsection (5B) applies where OSCR has cause to believe that giving or making a formal communication to a charity by the means specified in subsection (4)(b) or (5)(b) will not cause it to be received by the charity or, as the case may be, the charity trustee whose name is set out in the charity’s entry in the Register.

20 (5B) The communication may also be given or made by OSCR sending it by post in a prepaid registered letter, or by the recorded delivery service, addressed to the charity at such address or addresses as OSCR considers is likely to cause it to be received by the charity or a charity trustee of the charity.

(5C) Subsection (5D) applies where—

25 (a) OSCR has cause to believe that giving or making a formal communication of a specified notice to a charity, body or person by the means specified in subsection (4)(b) or (5)(b) will not cause it to be received by the charity, body or person, and

30 (b) based on the contact details OSCR holds for the charity, body or person, OSCR considers that it is not reasonably practicable to give or make the communication by the means specified in subsection (4)(a) or (c) or (5B).

(5D) The communication may also be given or made by such other means as OSCR considers appropriate (including, for example, by publishing the notice on its website or in a newspaper).

35 (5E) For the purposes of subsection (5C), a specified notice is one given by OSCR under—

(a) section 45A(2),

- (b) section 72(1) so far as it relates to a decision referred to in one of the following paragraphs of section 71—
- (i) paragraph (h),
 - (ii) paragraph (l) (so far as it relates to a direction under section 31(7) or (9)),
 - (iii) paragraph (mb),
 - (iv) paragraph (paa).”.

5

Variation of constitution

17 (1) Section 106 of the 2005 Act (general interpretation) is modified as follows.

10

- (2) In the definition of “constitution”, insert as closing words—

“but where the charity has varied its constitution (by means of a reorganisation scheme or otherwise), a reference to its constitution is a reference to its constitution as so varied.”.

Charities (Regulation and Administration) (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to modify certain aspects of the law relating to the regulation and administration of charities and their assets.

Introduced by: Shona Robison
On: 15 November 2022
Bill type: Government Bill

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