



Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

1990 CHAPTER 40

PART I

CHARITIES

Supervision of charities

6 Powers of Lord Advocate to investigate charities and to suspend trustees

- (1) The Lord Advocate may at any time make inquiries, either generally or for particular purposes, with regard to—
 - (a) a recognised body;
 - (b) a registered, or non-registered, charity operating as such in Scotland; or
 - (c) a non-recognised body which appears to him to represent itself or hold itself out as a charity and—
 - (i) is established under the law of Scotland;
 - (ii) is managed or controlled wholly or mainly in or from Scotland; or
 - (iii) has any moveable or immoveable property situated in Scotland,or with regard to any class of any such bodies.
- (2) Where it appears to the Lord Advocate—
 - (a) in the case of a body referred to in paragraph (a) or (b) of subsection (1) above—
 - (i) that there is or has been any misconduct or mismanagement in its administration; or
 - (ii) that it is necessary or desirable to act for the purpose of protecting its property or securing a proper application of such property for its purposes; or

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- (b) in any other case, that a body is a non-recognised body which appears to him to represent itself or hold itself out as a charity,
he may, if the body is managed or controlled wholly or mainly in or from Scotland, suspend any person concerned in its management or control from the exercise of his functions (but not for a period longer than 28 days), and may make provision as respects the period of the suspension for matters arising out of it.
- (3) The Lord Advocate may from time to time nominate officers for the purpose of making inquiries such as are mentioned in subsection (1) above.
- (4) A nominated officer may by notice in writing require any person who he has reason to believe has relevant information to answer questions or otherwise furnish information with respect to any matter relevant to inquiries being made under this section at a specified place and either at a specified time or forthwith.
- (5) A nominated officer may, for the purpose of making inquiries under this section—
- (a) require any person having in his possession or control any records relating to a body which is the subject of inquiries under this section to furnish him with copies of or extracts from any such records; or
 - (b) unless it forms part of the records of a court or of a public body or local authority, require such a person to transmit the record itself to him for inspection,
- either by a specified time or forthwith.
- (6) If any person fails or refuses to comply with a requirement made under subsection (4) or (5) above, the nominated officer may apply by summary application to the sheriff for an order requiring that person to—
- (a) attend and to answer such questions or to furnish such information at a time and place specified in the order;
 - (b) furnish the nominated officer with copies or extracts of such records as are specified in the order and by such time as is specified in the order;
 - (c) transmit to the nominated officer such records as are specified in the order by such time as is specified in the order,
- and the sheriff shall, if he considers it expedient to do so, make such an order.
- (7) A person shall not be excused from answering such questions as he may be required to answer by virtue of subsection (6) above on the ground that the answer may incriminate or tend to incriminate him, but a statement made by him in answer to any such question shall not be admissible in evidence in any subsequent criminal proceedings against him, except in a prosecution for an offence under section 2 of the False Oaths (Scotland) Act 1933.
- (8) A person who fails to comply with an order under subsection (6) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (9) Any person who wilfully alters, suppresses, conceals or destroys any record which he may be required to furnish or transmit under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both.
- (10) Subject to subsections (11) and (12) below, there shall be paid to any person who complies with a requirement under subsection (4) or (5) above such expenses as he has reasonably incurred in so complying.

- (11) A nominated officer shall, for the purpose of making inquiries under this section, be entitled without payment to inspect and take copies of or extracts from records in respect of which no requirement can be made under paragraph (b) of subsection (5) above.
- (12) A nominated officer shall, for the purpose of making inquiries under this section, be entitled without payment to keep any copy or extract furnished to him under this section; and where a record transmitted to him for his inspection relates only to one or more recognised body and is not held by any person entitled as trustee or otherwise of such a body to the custody of it, the nominated officer may keep it or may deliver it to the trustees of such a body or to any other person who may be so entitled.
- (13) In this section, “record” means a record held in any medium and includes books, documents, deeds or papers; and, in this Part of this Act—
- “registered charity” means a body which is registered as a charity in England and Wales under section 4 of the Charities Act 1960; and
 - “non-registered charity” means a charity which, by virtue of sub-section (4) of section 4 of that Act, is not required to register under that section.

7 Powers of Court of Session to deal with management of charities

- (1) Where it appears to the court, in the case of a recognised body or a registered, or non-registered, charity which is managed or controlled wholly or mainly in or from Scotland, that—
- (a) there is or has been any misconduct or mismanagement in its administration; or
 - (b) it is necessary or desirable to act for the purpose of protecting its property or securing a proper application of such property for its purposes,
- it may, on the application of the Lord Advocate, exercise any of the powers specified in paragraphs (a) to (f) of subsection (4) below.
- (2) Where the court is satisfied, in the case of such a body as is mentioned in subsection (1) above, that—
- (a) there is or has been any misconduct or mismanagement in its administration; and
 - (b) it is necessary or desirable to act for the purpose of protecting its property or securing a proper application of such property for its purposes,
- it may, on the application of the Lord Advocate, exercise any of the powers specified in paragraphs (f) to (j) of subsection (4) below.
- (3) Where the court is satisfied that a non-recognised body—
- (a) represents itself or holds itself out as a charity; and
 - (b) is established under the law of Scotland or is managed or controlled wholly or mainly in or from Scotland or has moveable or immoveable property situated in Scotland,
- it may, on the application of the Lord Advocate, exercise any of the powers specified in subsection (4) below.
- (4) The powers which may be exercised under this subsection by the court are—

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- (a) to interdict *ad interim* the body from representing itself or holding itself out as a charity or from such other action as the court, on the application of the Lord Advocate, thinks fit;
 - (b) to suspend any person concerned in the management or control of the body;
 - (c) to appoint *ad interim* a judicial factor to manage the affairs of the body;
 - (d) to make an order requiring any bank or other person holding money or securities on behalf of the body or of any person concerned in its control and management not to part with the money or securities without the court's approval;
 - (e) to make an order, notwithstanding anything in the trust deed or other document constituting the body, restricting the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the body without the approval of the court;
 - (f) to appoint a trustee, and section 22 of the Trusts (Scotland) Act 1921 shall apply to such a trustee as if he had been appointed under that section;
 - (g) to interdict the body from representing itself or holding itself out as a charity or from such other action as the court, on the application of the Lord Advocate, thinks fit;
 - (h) to remove any person concerned in the management or control of the body;
 - (j) to appoint a judicial factor to manage the affairs of the body.
- (5) Where the court is satisfied, in the case of such a body as is mentioned in subsection (1) above, that—
- (a) there has been in its administration any misconduct or mismanagement;
 - (b) it is necessary or desirable to act for the purpose of protecting its property or securing a proper application of such property for its purposes;
 - (c) it is not practicable nor in the best interests of the body to retain its existing administrative structure and, if appropriate, trustee body; and
 - (d) in its opinion, the body's purpose would be achieved better by transferring its assets to another such body,
- or where the court is satisfied as mentioned in subsection (3) above in the case of a non-recognised body, it may approve a scheme, presented to it by the Lord Advocate and prepared by him in accordance with regulations made by the Secretary of State, for the transfer of any assets of the body to such body as the Lord Advocate specifies in the scheme, being a recognised body or a registered, or non-registered, charity which is managed or controlled wholly or mainly in or from Scotland.
- (6) In the case of a registered, or non-registered, charity which is managed or controlled wholly or mainly outside Scotland but on behalf of which a bank or other person in Scotland holds moveable property, the court may, on the application of the Lord Advocate acting on information received from the Charity Commissioners for England and Wales, make an order requiring the bank or person not to part with that property without the court's approval and such an order shall be subject to such conditions as the court thinks fit.
- (7) Where the court has made an order under subsection (6) above and is satisfied, in the case of such a charity, that—
- (a) there has been in its administration any misconduct or mismanagement; and
 - (b) it is necessary or desirable to act for the purpose of protecting its property or securing a proper application of such property for its purposes,

it may, on the further application of the Lord Advocate, make an order confirming the order made under subsection (6) above and such an order shall be subject to such conditions as the court thinks fit.

- (8) Where the court has made an order under subsection (6) above and it is satisfied as to the matters specified in subsection (7) above in respect of such a charity, if in its opinion the moveable property would not be applied for the purposes of the charity, it may, on the further application of the Lord Advocate, transfer that property to such body as the Lord Advocate specifies in the application, being a body—
- (a) which is a recognised body or registered, or non-registered, charity the purposes of which closely resemble the purpose of the charity whose moveable property is transferred; and
 - (b) which has intimated that it will receive that property.
- (9) The court shall have power—
- (a) to vary or recall an order made under paragraph (d) or (e) of subsection (4) above or under subsection (6) or (7) above;
 - (b) to recall the suspension of a person under paragraph (b) of subsection (4) above
 - (c) to approve a scheme under subsection (5) above subject to such modifications as it thinks fit;
 - (d) subject to subsection (10) below, to award expenses as it thinks fit in any proceedings before it under this section.
- (10) In a case where, but for the provisions of this subsection, the court would have awarded expenses against the body which is the subject of the proceedings, the court—
- (a) shall have regard to the desirability of applying the property of the body for the charitable purposes of that body, or the charitable purposes which are purported to be the purposes of that body, and
 - (b) may award expenses against a person concerned in the control or management of the body, or against any such persons jointly and severally.
- (11) Where the court exercises in respect of a recognised body any power specified in subsection (4) or (5) above, the Lord Advocate may require that exercise to be noted for the purposes of section 1(3) of this Act.
- (12) In this section “the court” means the Court of Session.

8 Disqualification of persons concerned in the management or control of recognised bodies

- (1) A person who—
- (a) has been convicted of an offence involving dishonesty;
 - (b) is an undischarged bankrupt;
 - (c) has been removed, under section 7 of this Act, from being concerned in the management or control of any body; or
 - (d) is subject to a disqualification order under the Company Directors Disqualification Act 1986,
- shall, subject to the provisions of this section, be disqualified from being concerned with the management or control of a recognised body.
- (2) A person shall not be disqualified under subsection (1) above if—

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- (a) the conviction mentioned in that subsection is spent by virtue of the Rehabilitation of Offenders Act 1974; or
 - (b) the Lord Advocate has thought fit to grant in writing a waiver of that disqualification in respect of that person,
- but the Lord Advocate shall not grant a waiver where to do so would prejudice the operation of the Company Directors Disqualification Act 1986.
- (3) A person who is concerned with the management or control of a recognised body whilst disqualified by virtue of this section shall be guilty of an offence and liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both; and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.
- (4) The acts, in relation to the management or control of such a body, of such a person as is mentioned in subsection (1) above shall not be invalid only by reason of his disqualification under that subsection.
- (5) Proceedings for an offence under subsection (3) above shall not be commenced after the end of the period of 3 years beginning with the day on which the offence was committed but, subject to that, may be commenced at any time within 6 months from the date on which evidence sufficient in the opinion of the procurator fiscal to warrant proceedings came to his knowledge; and a certificate of the procurator fiscal as to the date on which such evidence came to his knowledge shall be conclusive evidence of that fact.
- (6) In this section, “undischarged bankrupt” means a person who has had his estate sequestrated, been adjudged bankrupt or has granted a trust deed for or entered into an arrangement with his creditors and has not been discharged under or by virtue of—
- (a) section 54 or section 75(4) of the Bankruptcy (Scotland) Act 1985;
 - (b) an order under paragraph 11 of Schedule 4 to that Act of 1985;
 - (c) section 279 or section 280 of the Insolvency Act 1986; or
 - (d) any other enactment or rule of law subsisting at the time of his discharge