



Companies Act 1989

1989 CHAPTER 40

PART V

OTHER AMENDMENTS OF COMPANY LAW

A company's capacity and related matters

112 Charitable companies (Scotland).

- (1) In the following provisions (which extend to Scotland only)—
- (a) “company” means [^{F1}a company registered under the Companies Act 2006]; and
 - (b) “charity” means a body [^{F2}entered in the Scottish Charity Register].
- (2) Where a charity is a company or other body corporate having power to alter the instruments establishing or regulating it as a body corporate, no exercise of that power which has the effect of the body ceasing to be a charity shall be valid so as to affect the application of—
- (a) any property acquired by virtue of any transfer, contract or obligation previously effected otherwise than for full consideration in money or money's worth, or any property representing property so acquired,
 - (b) any property representing income which has accrued before the alteration is made, or
 - (c) the income from any such property as aforesaid.
- (3) [^{F3}Sections 39 and 40 of the Companies Act 2006 (company's capacity and power of directors to bind company)] do not apply to the acts of a company which is a charity except in favour of a person who—
- (a) gives full consideration in money or money's worth in relation to the act in question, and
 - (b) does not know that the act is not permitted by the company's [^{F4}constitution] or, as the case may be, is beyond the powers of the directors,
- or who does not know at the time the act is done that the company is a charity.

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Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Section 112. (See end of Document for details)

- (4) However, where such a company purports to transfer or grant an interest in property, the fact that the act was not permitted by the company's [^{F5}constitution] or, as the case may be, that the directors in connection with the act exceeded any limitation on their powers under the company's constitution, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company's act.
- (5) In any proceedings arising out of subsection (3) the burden of proving—
- (a) that a person knew that an act was not permitted by the company's [^{F6}constitution] or was beyond the powers of the directors, or
 - (b) that a person knew that the company was a charity,
- lies on the person making that allegation.
- (6) Where a company is a charity and its name does not include the word "charity" or the word "charitable", the fact that the company is a charity shall be stated in English in legible characters—
- (a) in all business letters of the company,
 - (b) in all its notices and other official publications,
 - (c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company,
 - (d) in all conveyances purporting to be executed by the company, and
 - (e) in all its bills of parcels, invoices, receipts and letters of credit.
- (7) In subsection (6)(d) "conveyance" means any document for the creation, transfer, variation or extinction of an interest in land.
- [^{F7}(8) If a company fails to comply with subsection (6) it commits an offence.
- (9) An officer of a company, or a person acting on its behalf, who—
- (a) issues or authorises the issue of any business letter of the company, or any notice or other official publication of the company, in which the statement required by subsection (6) does not appear, or
 - (b) issues or authorises the issue of any bill, invoice, receipt or letter of credit in which the statement required by subsection (6) does not appear,
- commits an offence.
- (10) An officer of a company, or a person acting on its behalf, who signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the statement required by subsection (6) does not appear—
- (a) commits an offence, and
 - (b) is personally liable to the holder of the bill of exchange, promissory note, endorsement, cheque or order for money or goods for the amount of it (unless it is duly paid by the company).
- (11) A person guilty of an offence under subsection (8), (9) or (10) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

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Textual Amendments

- F1** Words in s. 112(1)(a) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 103(2)(a)** (with art. 10)
- F2** Words in s. 112(1)(b) substituted (1.4.2006) by [The Charities and Trustee Investment \(Scotland\) Act 2005 \(Consequential Provisions and Modifications\) Order 2006 \(S.I. 2006/242\)](#), arts. 1(3), 5, **Sch. para. 4**
- F3** Words in s. 112(3) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 103(2)(b)** (with art. 10)
- F4** Word in s. 112(3)(b) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 103(2)(c)** (with art. 10)
- F5** Word in s. 112(4) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 103(2)(c)** (with art. 10)
- F6** Word in s. 112(5)(a) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 103(2)(c)** (with art. 10)
- F7** S. 112(8)-(11) substituted for s. 112(8) (1.10.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(3), **Sch. 3 para. 6** (with arts. 6, 11, 12)

Commencement Information

- I1** Ss 108-112 and Schedule 19 para. 11 were not in force at the 1.2.1991 (base date) but were brought into force on 4.2.1991 by [S.I. 1990/2569](#).

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Changes to legislation:

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