



Charities Act 2011

2011 CHAPTER 25

PART 9

CHARITY TRUSTEES, TRUSTEES AND AUDITORS ETC.

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—
- P is a charity trustee or trustee for the charity, or
 - 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—

- 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
- 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

Status: This is the original version (as it was originally enacted).

Condition C is that if immediately after the agreement is entered into there is, in the case of the charity, more than one person who is a charity trustee and is—

- (a) a person in respect of whom an agreement within 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).

- (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.

Status: This is the original version (as it was originally enacted).

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