



Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

1990 CHAPTER 40

PART I

CHARITIES

Modifications etc. (not altering text)

- C1** **Pt. I** (ss. 1-15): functions of the Lord Advocate transferred to the Secretary of State, and all property, rights and liabilities to which the Lord Advocate is entitled or subject in connection with any such function transferred to the Secretary of State for Scotland (19.5.1999) by [S.I. 1999/678](#), arts. 2, 3, [Sch.](#) (with [art. 7](#))

Recognition of charities

1 Information as to recognised charities.

- (1) No obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise shall prevent the Commissioners of Inland Revenue (in this section referred to as “the Commissioners”) from disclosing—
- (a) to the Lord Advocate, information as regards any recognised body such as is mentioned in subsection (2) below,
 - (b) to any person who requests it, the name of any recognised body and the address last used by the Commissioners for any communication with the body and the year when such communication occurred.
- (2) A recognised body referred to in subsection (1)(a) above is a body—
- (a) which appears to the Commissioners to be or to have been carrying on activities which are not charitable or to be or to have been applying any of its funds for purposes which are not charitable;

Status: Point in time view as at 15/08/2003.

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- (b) which is certified by the Lord Advocate as being a body in respect of which information has been provided to the Scottish charities nominee by a relevant institution in pursuance of section 12 of this Act.
- (3) Where any information is made available to any person as mentioned in subsection (1) (b) above, the Commissioners shall include in such information any matter noted by them in respect of the body in pursuance of a requirement made by the Lord Advocate under this Part of this Act.
- (4) A recognised body shall provide to any person who requests it, on payment of such reasonable charge in respect of copying and postage as the body may stipulate, a copy of its explanatory document.
- (5) Where any recognised body, within one month of its being requested to do so by any person, fails to provide to that person a copy of its explanatory document as mentioned in subsection (4) above, the Lord Advocate, on a complaint being made to him by such person, may direct that the fact of such failure shall be noted for the purposes of subsection (3) above.
- (6) Where there has been a failure such as is mentioned in subsection (5) above, the court may, on an application being made by the Lord Advocate, interdict the body and any person concerned in its management or control from engaging in any activity specified in the application until the Lord Advocate intimates to the court that he is satisfied that the explanatory document has been provided.
- (7) In this Part of this Act “recognised body” means any body to which the Commissioners have given intimation, which has not subsequently been withdrawn, that relief will be due under section 505 of the ^{M1}Income and Corporation Taxes Act 1988 in respect of income of the body which is applicable and applied to charitable purposes only, being a body—
- (a) which is established under the law of Scotland; or
 - (b) which is managed or controlled wholly or mainly in or from Scotland,
- and a recognised body shall be entitled to describe itself as “a Scottish charity”.
- (8) For the purposes of any proceedings under or by virtue of this Part of this Act, a certificate purporting to be signed by a person authorised to do so by the Commissioners and certifying that a body is a recognised body shall be sufficient evidence of that fact and of the authority of that person.
- (9) In this section “explanatory document” means—
- (a) the trust deed of a body or other document constituting the body; or
 - (b) such other document as the Lord Advocate may approve,
- being a document which describes the nature of the body and of its charitable purposes.

Commencement Information

II S. 1 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, art.5, Sch. 3.

Marginal Citations

M1 1988 c. 1.

Status: Point in time view as at 15/08/2003.

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2 Non-recognised bodies.

- (1) A non-recognised body shall not be entitled to represent itself or hold itself out as a charity.
- (2) For the purposes of this Part of this Act, any body which is not—
 - (a) a recognised body; or
 - (b) a body which is—
 - (i) registered as a charity in England and Wales under section 4 of the ^{M2}Charities Act 1960; or
 - (ii) a charity which is not required to register by virtue of subsection (4) of that section,is a non-recognised body.
- (3) Where a non-recognised body represents itself or holds itself out as a charity, the court may, on an application made by the Lord Advocate, interdict the body from so representing itself or holding itself out until it becomes a body such as is mentioned in paragraph (a) or (b) of subsection (2) above.

Commencement Information

I2 S. 2 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, art.5, Sch. 3.

Marginal Citations

M2 1960 c. 58.

3 Designated religious bodies.

- (1) The Secretary of State may from time to time, by order, designate for the purposes of this section such recognised bodies as appear to him—
 - (a) to have as their principal purpose the promotion of a religious objective;
 - (b) to have as their principal activity the regular holding of acts of public worship; and
 - (c) to be bodies which satisfy each of the conditions mentioned in subsection (2) below.
- (2) The conditions referred to in subsection (1)(c) above are—
 - (a) subject to subsection (4) below, that the body has been established in Scotland for not less than 10 years;
 - (b) that the body can demonstrate to the satisfaction of the Secretary of State that it has a membership of not less than 3,000 persons resident in Scotland who are 16 years of age or more; and
 - (c) that the internal organisation of the body is such that one or more authorities in Scotland exercise supervisory and disciplinary functions in respect of the component elements of the body and , in particular, that there are imposed on such component elements requirements as to the keeping of accounting records and the auditing of accounts which appear to the Secretary of State to correspond to those required by sections 4 and 5 of this Act.

Status: Point in time view as at 15/08/2003.

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- (3) Where a body is, for the time being, designated under subsection (1) above the following provisions of this Part of this Act shall not apply to the body nor to any component or structural element of the body which is, itself, a recognised body—
- section 1(6);
 - section 4;
 - section 5, other than subsections (6) to (8) and subsection (12);
 - section 6(2) and (6);
 - section 7; and
 - section 8.
- (4) The Secretary of State may determine that the condition mentioned in subsection (2) (a) above shall not be required to be satisfied in the case of a body—
- (a) which has been created by the amalgamation of two or more bodies each of which, immediately before the amalgamation, either was designated under this section or appears to the Secretary of State to have been eligible for such designation; or
 - (b) which has been constituted by persons who have removed themselves from membership of a body which, immediately before such removal, was so designated or appears to the Secretary of State to have been eligible for such designation.

Commencement Information

I3 S. 3 wholly in force; s. 3(1) in force for certain purposes at 4.7.1992 and s. 3 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, arts.3,5, Schs. 1, 3.

Charities accounts

4 Duty to keep accounting records.

- (1) The persons concerned in the management or control of every recognised body shall ensure that there are kept in respect of the body, accounting records which are sufficient to show and explain the body's transactions and which are such as to—
- (a) disclose with reasonable accuracy, at any time, the financial position of the body at that time; and
 - (b) enable them to ensure that any statement of accounts prepared under section 5 of this Act complies with the requirements of that section.
- (2) The accounting records shall in particular contain—
- (a) entries showing from day to day all sums of money received and expended by the body, and the matters in respect of which the receipt and expenditure takes place; and
 - (b) a record of the assets and liabilities of the body.
- (3) The accounting records which are required by this section to be kept in respect of a recognised body shall be preserved, without prejudice to any requirement of any other enactment or rule of law, for six years from the date on which they are made.
- (4) The Secretary of State may, by regulations—

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- (a) prescribe requirements as to the places where and the persons by whom the accounting records of recognised bodies, including bodies which have been wound up or have ceased to be active, are to be kept; and
- (b) provide that such class or classes of recognised body as may be prescribed shall be exempt from such requirements of this section and section 5 of this Act as may be prescribed.

Commencement Information

I4 S. 4 wholly in force; s. 4(4) in force at 4.7.1992 and s. 4 wholly in force at 30.9.1992 see s. 75(2) and S.I. 1992/1599, arts.3,6, Schs. 1, 4.

5 Annual accounts and report.

- (1) The persons concerned in the management or control of every recognised body shall ensure that, in respect of each financial year of the body, there is prepared a statement of accounts.
- (2) Subject to subsection (3) below, the statement of accounts of every recognised body shall comprise—
 - (a) a balance sheet as at the last day of the year;
 - (b) an income and expenditure account; and
 - (c) a report as to the activities of the body, having regard to its charitable purposes.
- (3) As regards such class or classes of recognised body as the Secretary of State may, by regulations, prescribe a recognised body may elect that in respect of any financial year its statement of accounts shall, instead of the requirements of subsection (2) above, comprise—
 - (a) a statement of balances as at the last day of the year;
 - (b) a receipts and payments account; and
 - (c) a report as to the activities of the body, having regard to its charitable purposes.
- (4) The balance sheet shall give a true and fair view of the state of affairs of the body as at the end of the financial year; and the income and expenditure account shall give a true and fair view of the surplus or deficit of the body for the financial year.
- (5) The Secretary of State may, by regulations, prescribe—
 - (a) the form and content of the statement of accounts;
 - (b) any additional information to be provided by way of notes to the accounts; and
 - (c) such requirements as to auditing of the balance sheet, statement of balances, income and expenditure account and receipts and payments account and any notes thereon and as to the consideration of the report as he considers appropriate,and different provision may be prescribed for different bodies or classes of bodies.
- (6) The Lord Advocate may require any recognised body to furnish him, without payment therefor, with a copy of its statement of accounts.
- (7) Every such body shall—
 - (a) make available to any person who requests it, on payment of such reasonable charge in respect of copying and postage as the body may stipulate, a copy of its most recent statement of accounts;

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- (b) inform any person who requests it of its accounting reference date.
- (8) Where any recognised body fails, within 10 months, or such longer period as the Lord Advocate may allow, after the end of a financial year, to have prepared a statement of accounts, the Lord Advocate may require that such fact shall be noted for the purposes of section 1(3) of this Act.
- (9) Where a body has failed to have prepared a statement of accounts as mentioned in subsection (8) above, the Lord Advocate may require the persons concerned in the management or control of the body to have prepared a statement of accounts, by such date as he may require.
- (10) In any case where the statement of accounts has not been prepared by the date specified under subsection (9) above, the Lord Advocate may appoint a suitably qualified person to prepare a balance sheet and income and expenditure account or, in the case of a body which belongs to a class to which subsection (3) above applies if it appears to such person more appropriate to do so, a statement of balances and receipts and payments account; and a person so appointed shall be entitled, for that purpose—
- (a) on giving prior notice in writing, to enter, at all reasonable times, the premises of the body;
 - (b) to take possession of any document appearing to him to relate to the financial affairs of the body;
 - (c) to require any person concerned in the management or control of the body to give him such information as he may reasonably require relating to the activities of the body,
- and the persons concerned in the management or control of the body shall be personally liable jointly and severally for the expenses incurred in the performance of his functions under this section by any person so appointed.
- (11) A person appointed under subsection (10) above shall make a report to the Lord Advocate as to the affairs and accounting records of the body and shall send a copy of the report to any person appearing to him to be concerned in the management and control of the body.
- (12) Where any such body, within one month of its being requested to do so by any person—
- (a) fails to provide to that person a copy of its most recent statement of accounts as mentioned in subsection (7) above; or
 - (b) fails to inform that person of its accounting reference date,
- the Lord Advocate, on a complaint being made to him by such person, may direct that the fact of such failure shall be noted for the purposes of section 1(3) of this Act.
- (13) Where in the case of any recognised body, there has been a failure such as is mentioned in subsection (9) or (12) above the court may, on an application being made by the Lord Advocate, interdict the body and any person concerned in its management or control from engaging in any activity specified in the application until the Lord Advocate intimates to the court that he is satisfied that the failure has been rectified.
- (14) Section 4 of this Act and subsections (1), (2), (3), (4), (5), (8), (9), (10) and (11) and, so far as it relates to a failure such as is mentioned in the said subsection (9), subsection (13) of this section shall not apply to any recognised body which is —
- (a) a company within the meaning of section 735 of the ^{M3}Companies Act 1985; or

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- (b) an unregistered company to which Part VII of that Act (accounts and audit) applies by virtue of section 718 of that Act, and, in the application of the remainder of this section to such a body, references to its income and expenditure account and its report shall be construed as references to its profit and loss account and its directors' report.

Commencement Information

I5 S. 5 wholly in force; s. 5(3)(5) in force for certain purposes at 4.7.1992 and wholly in force at 30.9.1992 see s. 75(2) and S.I. 1992/1599, arts.3,6 Schs. 1, 4.

Marginal Citations

M3 1985 c. 6.

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
 - (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

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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 ^{M4}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.

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(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 ^{M5}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.

Commencement Information

I6 S. 6 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, art.5, Sch. 3.

Marginal Citations

M4 1933 c. 20.

M5 1960 c. 58.

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—

- (a) to interdict *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;

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- (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 ^{M6}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.

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- (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.

Commencement Information

I7 S. 7 wholly in force; s. 7(5) in force for certain purposes at 4.7.1992 and s. 7 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, arts.3,5, Schs. 1, 3.

Marginal Citations

M6 1921 c. 58.

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

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- (d) is subject to a disqualification order [^{F1}or disqualification undertaking] under the ^{M7}Company Directors Disqualification Act 1986 [^{F1}or to a disqualification order under Part II of the ^{M8}Companies (Northern Ireland) Order 1989], 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—
- the conviction mentioned in that subsection is spent by virtue of the ^{M9}Rehabilitation of Offenders Act 1974; or
 - 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 ^{M10}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—
- 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
 - 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—
- section 54 or section 75(4) of the ^{M11}Bankruptcy (Scotland) Act 1985;
 - an order under paragraph 11 of Schedule 4 to that Act of 1985;
 - section 279 or section 280 of the ^{M12}Insolvency Act 1986; or
 - any other enactment or rule of law subsisting at the time of his discharge

Textual Amendments

- F1** Words in s. 8(1)(d) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 17(a)(b)**; S.I. 2001/766, **art. 2(1)(a)** (subject to art. 3)

Commencement Information

- I8** S. 8 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, art. 5, **Sch. 3**.

Marginal Citations

- M7** 1986 c. 46.
M8 S.I. 1989/2404 (N.I. 18).

Status: Point in time view as at 15/08/2003.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Part I is up to date with all changes known to be in force on or before 05 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

M9 1974 c. 53.

M10 1986 c. 46.

M11 1985 c. 66.

M12 1986 c. 45.

Reorganisation of public trusts

9 Reorganisation of public trusts by the court.

- (1) Where, in the case of any public trust, the court is satisfied—
- (a) that the purposes of the trust, whether in whole or in part—
 - (i) have been fulfilled as far as it is possible to do so; or
 - (ii) can no longer be given effect to, whether in accordance with the directions or spirit of the trust deed or other document constituting the trust or otherwise;
 - (b) that the purposes of the trust provide a use for only part of the property available under the trust;
 - (c) that the purposes of the trust were expressed by reference to—
 - (i) an area which has, since the trust was constituted, ceased to have effect for the purpose described expressly or by implication in the trust deed or other document constituting the trust; or
 - (ii) a class of persons or area which has ceased to be suitable or appropriate, having regard to the spirit of the trust deed or other document constituting the trust, or as regards which it has ceased to be practicable to administer the property available under the trust; or
 - (d) that the purposes of the trust, whether in whole or in part, have, since the trust was constituted—
 - (i) been adequately provided for by other means; or
 - (ii) ceased to be such as would enable the trust to become a recognised body; or
 - (iii) ceased in any other way to provide a suitable and effective method of using the property available under the trust, having regard to the spirit of the trust deed or other document constituting the trust,
- the court, on the application of the trustees, may, subject to subsection (2) below, approve a scheme for the variation or reorganisation of the trust purposes.
- (2) The court shall not approve a scheme as mentioned in subsection (1) above unless it is satisfied that the trust purposes proposed in the scheme will enable the resources of the trust to be applied to better effect consistently with the spirit of the trust deed or other document constituting the trust, having regard to changes in social and economic conditions since the time when the trust was constituted.
- (3) Where any of paragraphs (a) to (d) of subsection (1) above applies to a public trust, an application may be made under this section for the approval of a scheme —
- (a) for the transfer of the assets of the trust to another public trust, whether involving a change to the trust purposes of such other trust or not; or
 - (b) for the amalgamation of the trust with one or more public trusts,
- and the court, if it is satisfied that the conditions specified in subsection (2) above are met, may approve such a scheme.

Status: Point in time view as at 15/08/2003.

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- (4) Subject to subsection (5) below, an application for approval of a scheme under this section shall be made to the Court of Session.
- (5) From such day as the Lord Advocate may, by order, appoint, an application for approval of a scheme under this section may be made by a public trust having an annual income not exceeding such amount as the Secretary of State may, by order, prescribe—
- (a) to the sheriff for the place with which the trust has its closest and most real connection;
 - (b) where there is no such place as is mentioned in paragraph (a) above, to the sheriff for the place where any of the trustees resides;
 - (c) where neither paragraph (a) nor (b) above applies, to the sheriff of Lothian and Borders at Edinburgh.
- (6) Every application under this section shall be intimated to the Lord Advocate who shall be entitled to enter appearance as a party in any proceedings on such application, and he may lead such proof and enter such pleas as he thinks fit; and no expenses shall be claimable by or against the Lord Advocate in any proceedings in which he has entered appearance under this subsection.
- (7) This section shall be without prejudice to the power of the Court of Session to approve a cy pres scheme in relation to any public trust.

Commencement Information

19 S. 9 wholly in force; s. 9(5) in force for certain purposes at 4.7.1992 and s. 9 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, arts.3,5, Schs. 1, 3.

10 Small trusts.

- (1) Where a majority of the trustees of any public trust having an annual income not exceeding £5,000 are of the opinion—
- (a) that the purposes of the trust, whether in whole or in part—
 - (i) have been fulfilled as far as it is possible to do so; or
 - (ii) can no longer be given effect to, whether in accordance with the directions or spirit of the trust deed or other document constituting the trust or otherwise;
 - (b) that the purposes of the trust provide a use for only part of the property available under the trust;
 - (c) that the purposes of the trust were expressed by reference to—
 - (i) an area which has, since the trust was constituted, ceased to have effect for the purpose described expressly or by implication in the trust deed or other document constituting the trust; or
 - (ii) a class of persons or area which has ceased to be suitable or appropriate, having regard to the spirit of the trust deed or other document constituting the trust, or as regards which it has ceased to be practicable to administer the property available under the trust; or
 - (d) that the purposes of the trust, whether in whole or in part, have, since the trust was constituted—
 - (i) been adequately provided for by other means; or

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- (ii) ceased to be such as would enable the trust to become a recognised body; or
 - (iii) ceased in any other way to provide a suitable and effective method of using the property available under the trust, having regard to the spirit of the trust deed or other document constituting the trust,subsection (2) below shall apply in respect of the trust.
- (2) Where this subsection applies in respect of a trust, the trustees may determine that, to enable the resources of the trust to be applied to better effect consistently with the spirit of the trust deed or other document constituting the trust—
 - (a) a modification of the trust’s purposes should be made;
 - (b) the whole assets of the trust should be transferred to another public trust; or
 - (c) that the trust should be amalgamated with one or more public trusts.
- (3) Where the trustees of a trust determine as mentioned in subsection (2)(a) above, they may, subject to subsections (4) to (6) below, pass a resolution that the trust deed be modified by replacing the trust purposes by other purposes specified in the resolution.
- (4) The trustees shall ensure that, so far as is practicable in the circumstances, the purposes so specified are not so far dissimilar in character to those of the purposes set out in the original trust deed or other document constituting the trust that such modification of the trust deed would constitute an unreasonable departure from the spirit of such trust deed or other document.
- (5) Before passing a resolution under subsection (3) above the trustees shall have regard—
 - (a) where the trust purposes relate to a particular locality, to the circumstances of the locality; and
 - (b) to the extent to which it may be desirable to achieve economy by amalgamating two or more trusts.
- (6) As regards a trust which is a recognised body, the trustees shall ensure that the purposes specified as mentioned in subsection (3) above are such as will enable the trust to continue to be granted an exemption from tax by the Commissioners of Inland Revenue under section 505(1) of the ^{M13}Income and Corporation Taxes Act 1988 (exemption from tax for charities).
- (7) Subject to subsection (14) below, a modification of trust purposes under this section shall not have effect before the expiry of a period of two months commencing with the date on which any advertisement in pursuance of regulations made under subsection (13) below is first published.
- (8) Where the trustees determine as mentioned in subsection (2)(b) above they may pass a resolution that the trust be wound up and that the assets of the trust be transferred to another trust or trusts the purposes of which are not so dissimilar in character to those of the trust to be wound up as to constitute an unreasonable departure from the spirit of the trust deed or other document constituting the trust to be wound up.
- (9) Before passing a resolution under subsection (8) above, the trustees shall—
 - (a) where the trust purposes relate to a particular locality, have regard to the circumstances of the locality;
 - (b) where the trust is a recognised body, ensure that the purposes of the trust to which it is proposed that the assets be transferred are such as will enable the trust to be granted an exemption from tax by the Commissioners of Inland

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- Revenue under section 505(1) of the Income and Corporation Taxes Act 1988 (exemption from tax for charities); and
- (c) ascertain that the trustees of the trust to which it is proposed to transfer the assets will consent to the transfer of the assets.
- (10) Where the trustees determine as mentioned in subsection (2)(c) above, they may pass a resolution that the trust be amalgamated with one or more other trusts so that the purposes of the trust constituted by such amalgamation will not be so dissimilar in character to those of the trust to which the resolution relates as to constitute an unreasonable departure from the spirit of the trust deed or other document constituting the last mentioned trust.
- (11) Before passing a resolution under subsection (10) above, the trustees shall—
- (a) where the trust purposes relate to a particular locality, have regard to the circumstances of the locality;
- (b) where any of the trusts to be amalgamated is a recognised body, ensure that the trust purposes of the trust to be constituted by such amalgamation will be such as to enable it to be granted an exemption from tax by the Commissioners of Inland Revenue under section 505(1) of the ^{M14}Income and Corporation Taxes Act 1988 (exemption from tax for charities); and
- (c) ascertain that the trustees of any other trust with which it is proposed that the trust will be amalgamated will agree to such amalgamation.
- (12) Subject to subsection (14) below, a transfer of trust assets or an amalgamation of two or more trusts under this section shall not be effected before the expiry of a period of two months commencing with the date on which any advertisement in pursuance of regulations made under subsection (13) below is first published.
- (13) The Secretary of State may, by regulations, prescribe the procedure to be followed by trustees following upon a resolution passed under subsection (3), (8) or (10) above, and such regulations may, without prejudice to the generality, include provision as to advertisement of the proposed modification or winding up, the making of objections by persons with an interest in the purposes of the trust, notification to the Lord Advocate of the terms of the resolution and the time within which anything requires to be done.
- (14) If it appears to the Lord Advocate, whether in consideration of any objections made in pursuance of regulations made under subsection (13) above or otherwise—
- (a) that the trust deed should not be modified as mentioned in subsection (3) above;
- (b) that the trust should not be wound up as mentioned in subsection (8) above; or
- (c) that the trust should not be amalgamated as mentioned in subsection (10) above,
- he may direct the trust not to proceed with the modification or, as the case may be winding up and transfer of funds or amalgamation.
- (15) The Secretary of State may, by order, amend subsection (1) above by substituting a different figure for the figure, for the time being, mentioned in that subsection.
- (16) This section shall apply to any trust to which section 223 of the ^{M15}Local Government (Scotland) Act 1973 (property held on trust by local authorities) applies.

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Marginal Citations

M13 1988 c. 1.

M14 1988 c. 1.

M15 1973 c. 65.

11 Expenditure of capital.

- (1) This section applies to any public trust which has an annual income not exceeding £1,000 where the trust deed or other document constituting the trust prohibits the expenditure of any of the trust capital.
- (2) In the case of any trust to which this section applies where the trustees—
 - (a) have resolved unanimously that, having regard to the purposes of the trust, the income of the trust is too small to enable the purposes of the trust to be achieved; and
 - (b) are satisfied that either there is no reasonable prospect of effecting a transfer of the trust's assets under section 10 of this Act or that the expenditure of capital is more likely to achieve the purposes of the trust,they may, subject to subsection (3) below, proceed with the expenditure of capital.
- (3) Not less than two months before proceeding to expend capital, the trustees shall advertise their intention to do so in accordance with regulations made by the Secretary of State and shall notify the Lord Advocate of such intention.
- (4) If it appears to the Lord Advocate that there are insufficient grounds for the expenditure of capital he may apply to the court for an order prohibiting such expenditure, and if the court is satisfied that there are such insufficient grounds it may grant the order.
- (5) The Secretary of State may, by order, amend subsection (1) above by substituting a different figure for the figure, for the time being, mentioned in that subsection.

Dormant charities

12 Dormant accounts of charities in banks, etc.

- (1) The Secretary of State may appoint a person to be the Scottish charities nominee (in this section referred to as “the nominee”) who shall have the functions conferred by this section.
- (2) Where the nominee receives from a relevant institution the following information—
 - (a) that every account held by the institution in the name of or on behalf of a named body is dormant; and
 - (b) the amount of the balance standing to the credit of the body in each such account,and he is satisfied that the body is a recognised body, subsection (3) or, as the case may be, subsection (5) below shall apply as regards the body and such accounts.
- (3) Where the aggregate amount standing to the credit of the body in such accounts as are mentioned in subsection (2) above does not exceed £5,000, unless it appears to the nominee—

Status: Point in time view as at 15/08/2003.

Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Part I is up to date with all changes known to be in force on or before 05 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) that a person is concerned in the management or control of the body; or
- (b) that there are circumstances relating to the body which would make it inappropriate to do so,

he shall transfer the balance standing to the credit of the body in such accounts to such other recognised body as he may determine, having regard to the purposes of the body in whose name or on whose behalf the accounts are held and those of the body to which it is proposed to transfer the funds; and the body to which the funds are transferred under this subsection or subsection (4) below shall be entitled to apply such funds for its purposes as it thinks fit.

- (4) Where, in the case of a body to which subsection (3) above applies, the nominee is unable to ascertain the purposes of the body in whose name or on whose behalf such accounts are held, he shall transfer the balance standing in the name of the body concerned to such other recognised body as appears to him expedient.
- (5) Where the aggregate amount standing to the credit of the body in such accounts as are mentioned in subsection (2) above exceeds £5,000 or in any case to which paragraphs (a) or (b) of subsection (3) above applies, the nominee shall advise the Lord Advocate of the information received by him in respect of the body and of any other matter which appears to him to be relevant in the circumstances.
- (6) Where the Lord Advocate receives information in pursuance of subsection (5) above he shall inform the nominee—
 - (a) in the case of a body which is a trust, whether he intends to exercise his power under section 13(2) of this Act to appoint new trustees to the body; or
 - (b) in any case, if he intends to apply to the Court of Session for the appointment of an interim judicial factor under section 7(4)(c) of this Act,

but if the Lord Advocate informs the nominee that he does not intend to proceed under either paragraph (a) or (b) above, subsection (3) above shall apply as regards the body and such accounts as are mentioned in subsection (2) above as if the aggregate amount of the balance referred to in subsection (3) did not exceed £5,000 and neither paragraph (a) nor (b) of that subsection applied.

- (7) Notwithstanding anything in any enactment or rule of law to the contrary, the nominee shall, by virtue of this subsection, have the right to effect any transaction (including a transaction closing the account) in relation to any account to which subsection (3) above applies; and the receipt of the nominee in respect of any funds withdrawn or transferred from an account by virtue of this subsection shall, as regards the interest of the nominee in respect of such funds, be a full and valid discharge to the relevant institution holding the account.
- (8) No liability (other than liability for a criminal offence) shall attach to the nominee in consequence of any act or omission of his in the performance of his functions under this section.
- (9) The power of the nominee to effect transactions in relation to the accounts of a body shall cease to have effect—
 - (a) when the Lord Advocate notifies him of his intention to proceed under subsection (6) above;
 - (b) if the relevant institution by which the accounts are held notifies the nominee that the accounts held by or on behalf of the body are no longer dormant; or

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- (c) where the nominee becomes aware of the identity of a person concerned in the management or control of the body, when he informs the institution of that fact,
- and in any case to which paragraph (c) above applies, the nominee shall also inform the Lord Advocate of that fact.
- (10) The Secretary of State may, by regulations made under this section—
- (a) make provision as to the procedure to be followed by the nominee in exercising his powers under this section;
 - (b) require the nominee to make to the Secretary of State an annual report as regards the exercise of his functions and such regulations may specify the form and content of such report; and the Secretary of State shall lay a copy of such report before each House of Parliament;
 - (c) prescribe the circumstances in which and the extent to which the nominee may apply any interest accruing to any account as regards which subsection (3) above applies during any period for which he is entitled to effect transactions in respect of the account for the purpose of defraying his expenses in connection with the exercise of his functions under this section;
 - (d) require the nominee to keep accounts as regards his outlays and expenses in connection with the exercise of his functions under this section; and
 - (e) amend subsections (3) and (5) above by substituting a different figure for the figure for the time being mentioned in those subsections.
- (11) Where every account held by or on behalf of a body which appears to a relevant institution to be a recognised body is a dormant account, no obligation of confidentiality or requirement of secrecy (whether imposed by any enactment or rule of law or otherwise) shall prevent the institution from supplying to the nominee information such as is mentioned in subsection (12) below.
- (12) Information referred to in subsection (11) above is information relating to any account such as is mentioned in that subsection which consists of any of the following—
- (a) the amount of the balance of the account as at the date the information is supplied;
 - (b) the last date on which a transaction (other than a transaction consisting only of the accrual of interest to the account) was effected in relation to the account;
 - (c) so far as is known to the institution, the terms of the trust deed or other document constituting the body or any information as to the nature of the purposes of the body.
- (13) For the purpose of this section—
- [^{F2}(a) a “relevant institution” is—
 - (i) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
 - (ii) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits;
 - (iii) such other person or class of persons as the Secretary of State may by regulations made under this section, prescribe;]
 - (b) an account is dormant if—

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- (i) in the period of ten years preceding the date on which the institution reviews the account, no transaction (other than a transaction consisting only of the accrual of interest to the account) has taken place in respect of the account; and
- (ii) the institution has no knowledge of the identity of any person concerned in the management or control of the body in whose name or on whose behalf the account is held.

Textual Amendments

F2 S. 12(13)(a) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 231

Miscellaneous

F3 13 Appointment of trustees.

- (1) Where a recognised body is a trust, notwithstanding anything to the contrary in the trust deed or other document constituting the trust, the trustees shall have power to appoint such number of additional trustees as will secure that, at any time, the number of trustees shall be not less than three.
- (2) Where in the case of any trust which is a recognised body—
 - (a) the number of trustees is less than three; and
 - (b) it appears to the Lord Advocate that the trustees will not, or are unable to, exercise their power under subsection (1) above,
 if it appears to the Lord Advocate expedient to do so, he may exercise the power in place of the trustees.

Textual Amendments

F3 S. 13 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, art.5, Sch. 3.

14 Alteration of purposes and winding-up of charitable companies.

- (1) This section applies to a recognised body which may be wound up by the Court of Session under or by virtue of Parts IV or V of the ^{M16}Insolvency Act 1986.
- (2) Where a body to which this section applies has power to alter the instruments establishing or regulating it, it shall not alter any charitable purposes in those instruments except in such a way as will enable the body to continue to be granted an exemption from tax by the Commissioners of Inland Revenue under section 505(1) of the ^{M17}Income and Corporation Taxes Act 1988 (exemption from tax of charities).
- (3) Notwithstanding section 124 of the ^{M18}Insolvency Act 1986, a petition for the winding-up under section 122 of that Act of a body to which this section applies may be presented by the Lord Advocate to any court in Scotland having jurisdiction.

Commencement Information

I10 S. 14 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, art.5, Sch. 3.

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Marginal Citations

- M16 1986 c. 45.
- M17 1988 c. 1.
- M18 1986 c. 45.

Interpretation

15 Interpretation of Part I, regulations and orders.

(1) In this Part of this Act—

“annual income” in relation to a recognised body means the income of the body for the financial year to which its most recent statement of accounts relates;

“accounting reference period”, “accounting reference date” and “financial year” shall be construed in accordance with subsections (2) to (7) below;

“body” includes the sole trustee of any trust and, as regards any reference in this Part of this Act to the institution of proceedings in any court or to any order of a court in relation to an unincorporated body, shall be construed—

- (a) in the case of a trust, as a reference to the trustees acting in their capacity as such;
- (b) in any other case, as a reference to the persons concerned in the management or control of the body;

“court”, for the purposes of establishing jurisdiction to hear or determine any matter other than under sections 7 and 9 of this Act, means the Court of Session or the sheriff court;

“non-recognised body” shall be construed in accordance with section 2 of this Act;

“non-registered charity” has the meaning given by section 6 of this Act;

“recognised body” has the meaning given by section 1 of this Act; and

“registered charity” has the meaning given by section 6 of this Act.

(2) For the purposes of this Part of this Act, a recognised body’s first financial year begins with the first day of its first accounting reference period and ends with the last day of that period or such other date, not more than 7 days before or after the end of that period, as the persons concerned with the management or control of the body may determine.

(3) Subject to subsection (4) below, subsequent financial years begin with the day immediately following the end of the body’s previous financial year and end with the last day of its next accounting reference period or such other date, not more than 7 days before or after the end of that period as the persons responsible for its management or control may determine.

(4) A recognised body’s accounting reference periods are determined according to its accounting reference date.

(5) A recognised body’s accounting reference date is the date upon which its accounting reference period ends in each calendar year and it shall be ascertained as follows—

- (a) in the case of a body which is recognised at the commencement of this section and in respect of which accounts have been prepared up to a date not more than

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- 12 months before such commencement, its accounting reference date shall be that date;
- (b) in the case of a body which is recognised at the commencement of this section and in respect of which no such accounts have been prepared, its accounting reference date shall be 31 March or such other date as the Secretary of State may, by order, prescribe;
 - (c) in the case of a body which is not recognised at the commencement of this section and in respect of which accounts have been prepared up to a date not more than 12 months before its recognition, its accounting reference date shall be that date; and
 - (d) a body which is not recognised at the commencement of this section and in respect of which no accounts have been prepared up to a date not more than 12 months before such commencement, unless it determines that its accounting reference date shall be 31 March or such other date as the Secretary of State may, by order, prescribe, shall by notice given to the Lord Advocate specify its accounting reference date.
- (6) A recognised body's first accounting reference period is—
- (a) in the case of a body which is recognised at the commencement of this section and in respect of which any accounts have been prepared for a period up to a date not more than 12 months before such commencement, the period beginning with that date;
 - (b) in the case of a body which is recognised at such commencement and in respect of which no such accounts have been prepared, the period beginning with such commencement;
 - (c) in the case of any other body, the period of more than 6 months, but not more than 18 months, beginning with the date from which its recognition takes effect and ending with its accounting reference date.
- (7) Its subsequent accounting reference periods are successive periods of 12 months beginning immediately after the end of the previous accounting reference period and ending with its accounting reference date.
- (8) A recognised body may, on giving not less than one month's notice of its intention to do so to the Lord Advocate, unless the Lord Advocate notifies the body that he objects to the proposal, specify a new accounting reference date having effect in relation to the body's current accounting reference period and subsequent periods.
- (9) Nothing in this Part of this Act, except section 1, shall affect any educational endowment within the meaning of section 122(1) of the ^{M19}Education (Scotland) Act 1980.
- (10) The ^{M20}War Charities Act 1940 shall cease to have effect as regards Scotland; but nothing in this subsection shall affect any prosecution for an offence under that Act which has been instituted before the commencement of this section.
- (11) Any power in this Part of this Act of the Secretary of State to make regulations or orders shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement Information

III S. 15 wholly in force; s. 15(11) in force and s. 15(5)(b)(d) in force for certain purposes at 4.7.1992, s. 15 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, arts.3,5, Schs. 1, 3.

Status: Point in time view as at 15/08/2003.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Part I is up to date with all changes known to be in force on or before 05 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Marginal Citations

M19 1980 c. 44.

M20 1940 c. 31.

Status:

Point in time view as at 15/08/2003.

Changes to legislation:

Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Part I is up to date with all changes known to be in force on or before 05 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.