



# Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

## 1990 CHAPTER 40

### PART I

#### CHARITIES

##### *Supervision of charities*

#### **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

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*Status: This is the original version (as it was originally enacted).*

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- (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 *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.