



## CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

### REMUNERATION FOR SERVICES

Sections 67 and 68 of the Charities and Trustee Investment (Scotland) Act 2005 deal with charity trustee remuneration. Charity trustees must not be remunerated from charitable funds unless certain conditions are met. These provisions apply not only to payments made direct to the charity trustee but also to connected persons who include:

- A person, married to, the civil partner of or living with the charity trustee.
- The child (including stepchild), parent, grandchild, grandparent, brother or sister of the charity trustee (or the spouse of such person).
- A company where the charity trustee or connected person has a substantial interest.
- A Scottish partnership where the charity trustee or connected person is a partner.

What steps require to be undertaken to comply with the Act if a charity trustee or connected person is to be employed, e.g. where a member of the Session or the Board is the Church officer, cleaner or organist?

The Congregational (or other Financial) Board, if there is one, or the Kirk Session will require to enter into a written agreement with the charity trustee or connected person, i.e. a contract of employment, which should set out the services to be provided and the maximum amount of remuneration to be paid for these services. This agreement will have to be agreed at a Board or Session meeting, as appropriate, and in addition the charity trustees will have to agree that the remuneration is reasonable in the circumstances and that it is in the interests of the charity that these services are provided by the charity trustee or connected person. The charity trustee in question should be required to leave the meeting whilst this item is discussed.

The Minute of the meeting should clearly specify

1. the services being provided,
2. the maximum amount of remuneration
3. that it is considered that this is reasonable in the circumstances
4. that it is considered to be in the interests of the charity that these services be provided by the charity trustee or connected person
5. who is authorised to execute the written agreement on behalf of the Board/Session.

In the case of employment the Board or Session will have to minute any future change to the salary of the charity trustee or connected person and affirm that it is reasonable etc

It should be noted these provisions also apply where other types of services are being provided by charity trustees or people connected to the charity trustee, e.g. a plumber mending a burst pipe; a builder repairing the church roof etc. Therefore, if a charity trustee or connected person is to be engaged to say paint the Church halls then it will be necessary to minute:

- the services being provided,
- the maximum amount to be paid for these services
- that the payment is considered reasonable in the circumstances and
- that it is considered to be in the interests of the charity for these services to be provided by the charity trustee or connected person.

The Law Department is happy to advise further should any particular points of difficulty arise.

#### **Note re charity trustee or connected person employed prior to April 2006**

If the charity trustee or connected person was employed when the 2005 Act came into force in April 2006 the Board/Session should have reviewed the position and minuted (a) the services being provided, (b) the maximum amount of remuneration, (c) that the remuneration is considered reasonable in the circumstances and (d) that it is considered to be in the interests of the charity for these services to continue to be provided by the charity trustee or connected person. There must be a written agreement in place.