

# CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON PARTS

#### Part 1: Charities

#### *Chapter 4 – Supervision of charities*

#### Other powers of OSCR following inquiries

44. **Section 31** sets out further powers which OSCR may use following inquiries which have been made under **section 28**. If it appears to OSCR that there has been misconduct (which **section 106** defines as including mismanagement) in the administration of a charity or that it is necessary for action to be taken to protect a charity's property or ensure that property is used for charitable purposes, OSCR may (**subsection (4)**) suspend a charity trustee, agent or employee. However, subsection (10) prevents OSCR from suspending a person if it considers the person has acted honestly and reasonably in relation to the misconduct concerned and ought fairly to be excused. This is intended to ensure that OSCR only takes proportionate action in relation to any misconduct of which it becomes aware. Alternatively OSCR may (**subsection (6)**) give a direction to restrict the transactions or the payments that may be made in the administration of the body without OSCR's consent. This is intended to protect the assets of a charity or a body that was representing itself as a charity. OSCR may also (**subsection (7)**) direct a financial institution (i.e. bank) or person holding property for a charity not to part with it without OSCR's consent. This will allow OSCR to ensure that assets raised for charitable purposes are not removed from a charity or body, protecting them for use for those purposes.
45. Where it appears to OSCR, following inquiries, that a body has been falsely representing itself to be a charity, it may direct (**section 31(5)**) the body or person to stop doing so.
46. Where it appears to OSCR, following inquiries, that a person has been claiming to act for a charity, it may (**section 31(8)**) direct the person to stop representing itself as a charity and to pay to the charity or body any assets that it had collected. OSCR may also direct a bank to pay sums collected for the charity or not to part with the property without OSCR's consent. This will ensure that OSCR has powers to require any assets raised in the name of a charity to be passed on to that charity.
47. **Section 32** provides details concerning the making and delivery of directions and notices in **section 31**. The maximum period for which OSCR may make directions is 6 months and if longer term action is considered necessary, OSCR may apply to the Court of Session for it to take action under **section 34**. **Subsection (5)** provides that it is an offence to fail to comply with a section 31 direction from OSCR, with the maximum penalty on summary conviction being level 5 on the standard scale (currently £5000) or maximum of 6 months imprisonment, or both.