

# CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON PARTS

#### Part 1: Charities

#### *Chapter 9 – Charity trustees*

#### Remuneration

81. **Section 67** provides that a charity trustee may not normally be paid for carrying out the duties and functions of being a charity trustee, unless specific authority for this is provided. This stems from the existing position that charities are generally understood to be voluntary organisations and that charity trustees will offer their services as such with no payment. However, under certain circumstances, it is acceptable that a charity trustee may be paid for being a trustee or for carrying out additional services on behalf of the charity, i.e. services that another person (not a trustee) might otherwise undertake for payment. In these circumstances, and where the conditions set out in **subsection (2)** are satisfied, this “service provider” may be remunerated from the charity’s funds for those services. The conditions are that the maximum amount of the remuneration is set out in a written agreement, is reasonable, that the charity trustees are satisfied, prior to entering into the agreement that it is in the interests of the charity, that a minority of trustees are either paid in this way or connected to trustees who are, and that the constitution of the charity allows it to occur. Despite the above, **subsection (5)** ensures that a charity trustee or other service provider may receive remuneration from a charity if they are entitled to receive it under a specific authorising provision in the charity’s constitution (in force on 15 November 2004 - the day that the Bill for this Act was introduced to the Parliament), as a result of a court order, or under any enactment. This means that charities could not make changes to their constitution merely to allow payment of charity trustees before this Act came into force and that trustees may be paid if other legislation or a court order specifically allows it.
82. **Section 68** sets out definitions for terms which are referred to in parts of **section 67**, such as those who would be considered to be connected with a trustee. Such a person is defined as “connected” to a charity trustee if they are married to them, are their civil partner, are living as if married, or if they are a close family relative (i.e. a child, stepchild, parent, grandchild, grandparent, brother or sister of them or their spouse). Also an institution or body cooperate is considered to be “connected” with a charity trustee if it is controlled by them or a “connected” relative, or if they have a substantial interest the body. **Section 105** sets out when a charity or person is considered to have control of another body.