



# Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

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**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 9th June 2005 and received Royal Assent on 14th July 2005**

An Act of the Scottish Parliament to make provision about charities and other benevolent bodies; to make provision about fundraising in connection with charities and other benevolent bodies; to amend the law in relation to the investment powers of trustees; and for connected purposes.

VALID FROM 01/01/2006

## **PART 1** **S**

### CHARITIES

VALID FROM 24/02/2006

## **CHAPTER 1** **S**

### OFFICE OF THE SCOTTISH CHARITY REGULATOR

#### **1** **Office of the Scottish Charity Regulator** **S**

- (1) There is to be an office to be known as the Office of the Scottish Charity Regulator.
- (2) There is established a body corporate, to be known as the Scottish Charity Regulator, which is to be the holder of that office.
- (3) That office-holder is referred to in this Act as “OSCR”.

**Status:** Point in time view as at 14/07/2005. This version of this Act contains provisions that are not valid for this point in time.

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- (4) OSCR has the functions conferred on it by or under this Act and any other enactment.
- (5) OSCR's general functions are—
  - (a) to determine whether bodies are charities,
  - (b) to keep a public register of charities,
  - (c) to encourage, facilitate and monitor compliance by charities with the provisions of this Act,
  - (d) to identify and investigate apparent misconduct in the administration of charities and to take remedial or protective action in relation to such misconduct, and
  - (e) to give information or advice, or to make proposals, to the Scottish Ministers on matters relating to OSCR's functions.
- (6) OSCR may do anything (whether in Scotland or elsewhere) which is calculated to facilitate, or is conducive or incidental to, the performance of its functions.
- (7) Subsection (6) does not enable OSCR to do anything in contravention of any express prohibition, restriction or limitation on its powers which is contained in any enactment (including this Act).
- (8) OSCR must perform its functions in a manner that encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (9) In performing its functions OSCR must, so far as relevant, have regard to—
  - (a) the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed, and
  - (b) any other principle appearing to OSCR to represent best regulatory practice.
- (10) Schedule 1 makes further provision about the Scottish Charity Regulator.

VALID FROM 24/04/2006

## 2 Annual reports **S**

- (1) As soon as practicable after the end of each financial year, OSCR must—
  - (a) prepare and publish a general report on the exercise of its functions during that year,
  - (b) send a copy of the report to the Scottish Ministers, and
  - (c) lay a copy of the report before the Scottish Parliament.
- (2) A general report may include, in particular, any general recommendations which OSCR may have arising from the exercise of its functions during that year and any previous financial year.
- (3) It is for OSCR to determine the form and content of a general report and by what means it is to be published.

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## CHAPTER 2 **S**

### SCOTTISH CHARITY REGISTER

#### *The Register*

### **3 Scottish Charity Register **S****

- (1) OSCR must keep a register of charities to be known as the “Scottish Charity Register” (and referred to in this Act as “the Register”).
- (2) The Register is to be kept in such manner as OSCR thinks fit.
- (3) The Register must contain a separate entry for each charity entered in it setting out—
  - (a) the name of the charity,
  - (b) the principal office of the charity or, where it does not have such an office, the name and address of one of its charity trustees,
  - (c) the purposes of the charity,
  - (d) where the charity is a designated religious charity or a designated national collector, that fact,
  - (e) where—
    - (i) a direction is given under section 11(3), 12(2) or (3), 16(6), 28(3), 30(1) or 31(5) to (9), or
    - (ii) a notice is given under section 31(4),in relation to the charity, the fact that the direction or notice has been given and the date on which it was given,
  - (f) any other information in relation to the charity which the Scottish Ministers by regulations require to be set out in the Register, and
  - (g) any other information in relation to the charity which OSCR considers appropriate.
- (4) OSCR must, despite subsection (3)(b), exclude the information specified in that provision from a charity's entry in the Register if, on the application of the charity (whether together with its application for entry in the Register or separately), OSCR is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.
- (5) OSCR must, if it is satisfied that a direction or notice of a type described in subsection (3)(e) has been complied with or no longer has effect, remove reference to the direction or notice from the charity's entry.
- (6) OSCR must—
  - (a) from time to time, review each entry in the Register, and
  - (b) if it considers any information set out in a charity's entry to be inaccurate—
    - (i) amend the entry accordingly, and
    - (ii) notify the charity of the amendment made.

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## Applications

VALID FROM 24/04/2006

### 4 Application for entry in Register **S**

An application for entry in the Register must—

- (a) state the name of the body making the application (the “applicant”),
- (b) state the principal office of the applicant or, where it does not have such an office, the name and address of one of the persons who, if the applicant is entered in the Register, will be its charity trustees,
- (c) be accompanied by—
  - (i) a statement of the applicant's purposes,
  - (ii) a copy of the applicant's constitution, and
  - (iii) the applicant's most recent statement of account (if any), and
- (d) contain such other information, and be accompanied by such other documents, as may be—
  - (i) required by regulations under section 6(1), or
  - (ii) otherwise requested by OSCR.

VALID FROM 24/04/2006

### 5 Determination of applications **S**

- (1) OSCR may enter an applicant in the Register only if it considers that the applicant meets the charity test.
- (2) OSCR must refuse to enter an applicant if—
  - (a) it considers that the applicant's name falls within section 10, or
  - (b) the application must, by virtue of regulations under section 6(1), be refused, but must not otherwise refuse to enter an applicant which it considers meets the charity test.

### 6 Applications: further procedure **S**

- (1) The Scottish Ministers may by regulations make such further provision in relation to the procedure for applying and determining applications for entry in the Register (including applications under section 54(1), 56(1) and 59(1)) as they think fit.
- (2) Such regulations may in particular make provision about—
  - (a) information and documents which must be specified in or accompany an application,
  - (b) the form and manner in which applications must be made,
  - (c) the period within which OSCR must make a decision on an application, and
  - (d) circumstances in which OSCR must refuse to enter a body in the Register.

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### The charity test

#### 7 The charity test **S**

- (1) A body meets the charity test if—
  - (a) its purposes consist only of one or more of the charitable purposes, and
  - (b) it provides (or, in the case of an applicant, provides or intends to provide) public benefit in Scotland or elsewhere.
- (2) The charitable purposes are—
  - (a) the prevention or relief of poverty,
  - (b) the advancement of education,
  - (c) the advancement of religion,
  - (d) the advancement of health,
  - (e) the saving of lives,
  - (f) the advancement of citizenship or community development,
  - (g) the advancement of the arts, heritage, culture or science,
  - (h) the advancement of public participation in sport,
  - (i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended,
  - (j) the advancement of human rights, conflict resolution or reconciliation,
  - (k) the promotion of religious or racial harmony,
  - (l) the promotion of equality and diversity,
  - (m) the advancement of environmental protection or improvement,
  - (n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage,
  - (o) the advancement of animal welfare,
  - (p) any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.
- (3) In subsection (2)—
  - (a) in paragraph (d), “the advancement of health” includes the prevention or relief of sickness, disease or human suffering,
  - (b) paragraph (f) includes—
    - (i) rural or urban regeneration, and
    - (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities,
  - (c) in paragraph (h), “sport” means sport which involves physical skill and exertion,
  - (d) paragraph (i) applies only in relation to recreational facilities or activities which are—
    - (i) primarily intended for persons who have need of them by reason of their age, ill-health, disability, financial hardship or other disadvantage, or
    - (ii) available to members of the public at large or to male or female members of the public at large,
  - (e) paragraph (n) includes relief given by the provision of accommodation or care, and

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- (f) for the purposes of paragraph (p), the advancement of any philosophical belief (whether or not involving belief in a god) is analogous to the purpose set out in paragraph (c).
- (4) A body which falls within paragraphs (a) and (b) of subsection (1) does not, despite that subsection, meet the charity test if—
  - (a) its constitution allows it to distribute or otherwise apply any of its property (on being wound up or at any other time) for a purpose which is not a charitable purpose,
  - (b) its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities, or
  - (c) it is, or one of its purposes is to advance, a political party.
- (5) The Scottish Ministers may by order disapply either or both of paragraphs (a) and (b) of subsection (4) in relation to any body or type of body specified in the order.

VALID FROM 24/04/2006

## 8 Public benefit **S**

- (1) No particular purpose is, for the purposes of establishing whether the charity test has been met, to be presumed to be for the public benefit.
- (2) In determining whether a body provides or intends to provide public benefit, regard must be had to—
  - (a) how any—
    - (i) benefit gained or likely to be gained by members of the body or any other persons (other than as members of the public), and
    - (ii) disbenefit incurred or likely to be incurred by the public,
 in consequence of the body exercising its functions compares with the benefit gained or likely to be gained by the public in that consequence, and
  - (b) where benefit is, or is likely to be, provided to a section of the public only, whether any condition on obtaining that benefit (including any charge or fee) is unduly restrictive.

VALID FROM 24/02/2006

## 9 Guidance on charity test **S**

OSCR must, after consulting representatives of the charitable sector and such other persons as it thinks fit, issue guidance on how it determines whether a body meets the charity test.

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### Charity names

#### 10 Objectionable names **S**

- (1) A body's name falls within this section if it is—
  - (a) the same as, or too like, the name of a charity,
  - (b) likely to mislead the public as to the true nature of the purposes of the body or of the activities which it carries on, or intends to carry on, in pursuit of those purposes,
  - (c) likely to give the impression that the body is connected in some way to the Scottish Administration, Her Majesty's Government in the United Kingdom or any local authority, or with any other person, when it is not so connected, or
  - (d) offensive.
- (2) The reference in subsection (1)(b) to a body's purposes are—
  - (a) in the case of an applicant, the purposes set out in the statement accompanying its application,
  - (b) in the case of a charity, the purposes set out in its entry in the Register, and
  - (c) in the case of an SCIO proposed in an application under section 54(1), 56(1) or 59(1), the purposes set out in the SCIO's proposed constitution accompanying the application.

#### 11 Change of name **S**

- (1) A charity may change its name only with OSCR's consent.
- (2) A charity which proposes to change its name must, not less than 42 days before doing so, give notice to OSCR specifying its proposed new name.
- (3) Unless OSCR, within 28 days of the date on which a notice is given under subsection (2), directs the charity not to change its name, OSCR is to be taken as having given its consent.
- (4) OSCR may refuse to consent to a charity changing its name only where it considers that the proposed new name falls within section 10.

#### 12 Power of OSCR to require charity to change name **S**

- (1) A charity may, if it considers that the name of another charity is too like its name, request OSCR to review the names.
- (2) OSCR must, if satisfied following such a review that the names of two charities are too alike, direct either one or both of the charities to change its name.
- (3) OSCR must, where at any other time it considers that a charity's name falls within section 10, direct the charity to change its name.
- (4) Section 11 applies in relation to a change of name in compliance with a direction under this section (and the charity directed must give notice of its proposed new



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name under subsection (2) of that section within such period as may be specified in the direction).

- (5) OSCR must remove from the Register any charity which fails to comply with a direction under this section.

### References to charitable status

VALID FROM 01/04/2006

#### 13 References to charitable status **S**

- (1) A body entered in the Register may refer to itself as a “charity”, a “charitable body”, a “registered charity” or a “charity registered in Scotland”.
- (2) If such a body is established under the law of Scotland, or is managed or controlled wholly or mainly in or from Scotland, it may also refer to itself as a “Scottish charity” or a “registered Scottish charity”.
- (3) A body which refers to itself in any of the ways described in subsection (1) is to be treated as representing itself as a body entered in the Register.
- (4) A body which refers to itself in any of the ways described in subsection (2) is to be treated as representing itself—
- (a) as a body entered in the Register, and
  - (b) as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland.

VALID FROM 01/04/2006

#### 14 Exception for certain bodies not in Register **S**

A body which is not entered in the Register may, despite section 13, refer to itself as a “charity” without being treated as representing itself as a charity if, and only if—

- (a) it is—
  - (i) established under the law of a country or territory other than Scotland,
  - (ii) entitled to refer to itself as a “charity” (by any means or in any language) in that country or territory, and
  - (iii) managed or controlled wholly or mainly outwith Scotland,
- (b) it does not—
  - (i) occupy any land or premises in Scotland, or
  - (ii) carry out activities in any office, shop or similar premises in Scotland, and
- (c) in making that reference, it also refers to being established under the law of a country or territory other than Scotland.



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## 15 References in documents **S**

- (1) The Scottish Ministers may by regulations require each body entered in the Register to state, in legible characters—
  - (a) that it is a charity,
  - (b) such other information as may be specified in the regulations,
 on such documents issued or signed on behalf of the charity as may be so specified.
- (2) Such regulations may—
  - (a) exempt charities, or charities of a particular type, from any of the requirements imposed by the regulations,
  - (b) provide that any statement required by them may, in the case of documents which are otherwise wholly or mainly in a language other than English, be made in that other language.

VALID FROM 01/04/2006

### *Changes*

## 16 Changes which require OSCR's consent **S**

- (1) A charity may take any action set out in subsection (2) only with OSCR's consent and in accordance with any conditions attached to any such consent.
- (2) Those actions are—
  - (a) amending its constitution so far as it relates to its purposes,
  - (b) amalgamating with another body,
  - (c) winding itself up or dissolving itself,
  - (d) applying to the court in relation to any action set out in paragraphs (a) to (c).
- (3) Subsection (1) does not apply in relation to any action—
  - (a) in pursuance of an approved reorganisation scheme, or
  - (b) for which OSCR's consent is required by virtue of any other enactment.
- (4) Where a charity proposes to take any action set out in subsection (2) it must, not less than 42 days before the date on which the action is to be taken, give notice to OSCR of the proposal specifying that date.
- (5) In the case of an action set out in subsection (2)(a), the charity must not proceed unless and until OSCR has given its consent.
- (6) In any other case, unless OSCR, within 28 days of the date on which notice is given under subsection (4)—
  - (a) refuses its consent, or
  - (b) directs the charity not to take the action for a period of not more than 6 months specified in the direction,
 OSCR is to be taken as having consented to it.
- (7) A direction under subsection (6)(b)—
  - (a) may be revoked at any time,

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- (b) may be varied, but not so as to have effect for a period of more than 6 months from the date on which it is given.
- (8) Where OSCR gives such a direction it must, after making such inquiries as it thinks fit—
  - (a) give its consent, whether or not subject to conditions, or
  - (b) refuse its consent.

## 17 Notification of other changes **S**

- (1) A charity must give OSCR notice of—
  - (a) any change in—
    - (i) the principal office of the charity, or
    - (ii) where it does not have such an office, the name or address of the charity trustee specified in the Register (or which would, but for section 3(4), be so specified),
  - (b) any change in any other details set out in its entry in the Register,
  - (c) any change to its constitution,
  - (d) any action set out in section 16(2)(b) to (d) which the charity has taken,
  - (e) any administration order or an order for winding up made by the court in respect of the charity,
  - (f) the appointment of a receiver in respect of any of the charity's property, setting out the date on which the change, action, order or appointment took effect.
- (2) Subsection (1) does not apply in relation to any action which requires OSCR's consent under section 16.
- (3) A notice under any of paragraphs (a) to (d) of subsection (1) must be given within 3 months of the date of the change or action to which it relates.
- (4) A notice under paragraph (e) or (f) of subsection (1) must be given within 1 month of the date of the order or appointment to which it relates.

### *Removal from Register*

VALID FROM 24/04/2006

## 18 Removal from Register **S**

- OSCR must, within 28 days of the date on which it receives an application from a charity for removal from the Register—
- (a) remove the charity from the Register, and
  - (b) give it notice of the date on which it is removed.

## 19 Removal from Register: protection of assets **S**

- (1) A body removed from the Register (under section 18 or otherwise) continues to be under a duty to apply—

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- (a) any property previously acquired, or any property representing property previously acquired,
  - (b) any property representing income which has previously accrued, and
  - (c) the income from any such property,in accordance with its purposes as set out in its entry in the Register immediately before its removal.
- (2) Despite the removal of a body from the Register, the provisions of this Part set out in subsection (3) continue to apply to the body, but only so far as they relate to property and income referred to in subsection (1).
- (3) Those provisions are—
  - (a) in Chapter 4—
    - sections 28 and 29,
    - section 31(1) to (3) and (5) to (9),
    - section 32,
    - section 33(2) to (5),
    - section 34(1) to (3), (5)(a) to (c) and (f) to (h), (7) and (10)(b), and
    - section 37, and
  - (b) in Chapter 6, sections 44 and 45.
- (4) The Court of Session may, on an application by OSCR, approve a scheme prepared by OSCR in accordance with regulations made by the Scottish Ministers for the transfer to a charity specified in the scheme of any property or income which a body removed from the Register is required to apply in accordance with subsection (1).
- (5) The court may approve such a scheme only if it is satisfied—
  - (a) that it is necessary or desirable to act for the purpose of protecting the property or income to which the scheme relates or securing a proper application of such property or income for the purposes which were set out in the body's entry in the Register immediately before its removal, and
  - (b) that those purposes would be better achieved by transferring the property and income to a charity.
- (6) The court may approve a scheme under subsection (5) subject to modifications.
- (7) A charity receiving property or income in pursuance of a scheme approved under subsection (5) may apply that property or income for its purposes as it thinks fit.
- (8) The Scottish Ministers may by order disapply subsections (1) to (7) in relation to any property specified in the order.
- (9) An order under subsection (8) may make provision in relation to particular items or types of property or in relation to property owned by particular persons.
- (10) It is not competent for such order to make provision in relation to property which is not owned by a charity on the day the order takes effect.

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## CHAPTER 3 **S**

### CO-OPERATION AND INFORMATION

VALID FROM 24/04/2006

#### *Co-operation*

#### **20 Co-operation **S****

- (1) OSCR must, so far as consistent with the proper exercise of its functions, seek to secure co-operation between it and other relevant regulators.
- (2) A “relevant regulator” is a public body or office-holder with functions (whether exercisable in the United Kingdom or elsewhere) which are—
  - (a) similar to those of OSCR, or
  - (b) conferred by any enactment and designed to allow the body or office-holder to regulate persons for other purposes.
- (3) OSCR and any person authorised by virtue of section 38(1) or (2) to exercise functions under this Act must, so far as consistent with the proper exercise of their respective functions, co-operate with each other for the purpose of enabling or assisting the person to exercise those functions under this Act.
- (4) Co-operation does not include the sharing of information which OSCR or any person with whom it is co-operating is prevented by law from disclosing.

#### *Information about charities*

VALID FROM 24/04/2006

#### **21 Public access to Register **S****

- (1) OSCR must make the Register available for public inspection—
  - (a) at all reasonable times at its principal office,
  - (b) at such other places as it thinks fit, and
  - (c) otherwise as it thinks fit.
- (2) It is for OSCR to determine the form and manner in which the Register is made available; but in doing so OSCR must ensure that the information in the Register is made reasonably obtainable.
- (3) OSCR must publicise the arrangements which it makes in pursuance of subsection (1).
- (4) OSCR may charge such fee (not exceeding the cost of supply) as it thinks fit for providing information under any arrangements it makes under subsection (1)(b) and (c).

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## 22 Power of OSCR to obtain information from charities **S**

- (1) OSCR may by notice require any charity to provide to it—
  - (a) any document, or a copy of or extract from any document,
  - (b) documents of any type, or copies of or extracts from such documents,
  - (c) other information or explanation,
 which OSCR requires in relation to the charity's entry in the Register.
- (2) The notice must specify—
  - (a) the documents, type of documents, copies, extracts, information or explanation which the charity is to provide to OSCR, and
  - (b) the date (which must be at least 14 days after the date on which the notice is given) by which the charity must do so.
- (3) Subsection (1) does not authorise OSCR to require the disclosure of anything which a charity would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

## 23 Entitlement to information about charities **S**

- (1) A person who requests a charity to provide a copy of its—
  - (a) constitution,
  - (b) latest statement of account prepared under section 44,
 is, if the request is reasonable, entitled to be given that copy constitution or copy statement of account (if any) by the charity in such form as the person may reasonably request.
- (2) A charity may charge such fee as it thinks fit for complying with such a request; but such a fee must not exceed the cost of supplying the document requested or, if less, any maximum fee which the Scottish Ministers may by order prescribe.
- (3) The Scottish Ministers may by order exempt from the duty set out in subsection (1) any charities which meet such criteria as may be specified in the order.

### *Sharing information*

VALID FROM 24/04/2006

## 24 Disclosure of information by and to OSCR **S**

- (1) OSCR may disclose any information to any public body or office-holder (in Scotland, in any other part of the United Kingdom or in a country or territory outside the United Kingdom)—
  - (a) for any purpose connected with the exercise of OSCR's functions, or
  - (b) for the purpose of enabling or assisting the public body or office-holder to exercise any functions.

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- (2) Any person to whom this subsection applies may disclose any information to OSCR for the purpose of enabling or assisting OSCR to exercise any functions.
- (3) Subsection (2) applies to—
- (a) any office-holder in the Scottish Administration,
  - (b) the Scottish Parliamentary Corporate Body,
  - (c) any local authority,
  - (d) any constable, and
  - (e) any other Scottish public authority with mixed functions or no reserved functions.
- (4) A power to disclose information under subsection (1) or (2) is, unless section 25 otherwise provides, subject to any obligation as to secrecy or other restriction on disclosure of the information however imposed.

## 25 Removal of restrictions on disclosure of certain information **S**

- (1) No obligation as to secrecy or other restriction on disclosure of information however imposed prevents—
- (a) OSCR from disclosing any information to a designated body for—
    - (i) any purpose connected with the exercise of OSCR's functions,
    - (ii) the purpose of enabling or assisting that body to exercise any functions,
  - (b) a designated body from disclosing any information to OSCR for the purpose of enabling or assisting OSCR to exercise any functions,
  - (c) a charity trustee of a charity from disclosing any information about that charity to OSCR for the purpose of enabling or assisting OSCR to exercise any functions,
  - (d) any person from disclosing any information to OSCR about any matter in respect of which the person is required or authorised by section 46 to make a report to OSCR, or
  - (e) a relevant financial institution from disclosing any information to OSCR for the purpose of enabling or assisting OSCR to exercise any functions under section 47.
- (2) The Scottish Ministers may, by order, designate—
- (a) for the purposes of paragraph (a) of subsection (1), any public body or office-holder in Scotland, in any other part of the United Kingdom or in a country or territory outside the United Kingdom,
  - (b) for the purposes of paragraph (b) of that subsection, any Scottish public authority with mixed functions or no reserved functions,
- and references in that subsection to a “designated body” are to be construed accordingly.

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VALID FROM 24/04/2006

*Supplemental***26 False or misleading information etc. S**

- (1) It is an offence for a person to provide any information or explanation to OSCR or any other person if—
- (a) the person providing the information or explanation knows it to be, or is reckless as to whether it is, false or misleading in a material respect, and
  - (b) the information or explanation is provided—
    - (i) in purported compliance with a requirement by or under this Act, or
    - (ii) in other circumstances in which the person providing it knows, or could reasonably be expected to know, that it would be used by OSCR, or provided to OSCR for use, in connection with the exercise of its functions.
- (2) It is an offence for a person deliberately to alter, suppress, conceal or destroy any document (or any part of a document) which the person is, or which that person knows any other person is, required by or under this Act to provide to OSCR.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a period not exceeding 6 months, or to both.

**27 Disclosure of information: entitlement under other enactments etc. S**

Sections 21 to 25 are without prejudice to any entitlement to receive or disclose information under any enactment or otherwise.

**CHAPTER 4 S**

## SUPERVISION OF CHARITIES ETC.

VALID FROM 01/04/2006

*Inquiries***28 Inquiries about charities etc. S**

- (1) OSCR may at any time make inquiries, either generally or for particular purposes, with regard to—
- (a) a charity,
  - (b) a body controlled by a charity (or by two or more charities, when taken together),



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- (c) a body which is not entered in the Register which appears to OSCR to represent itself as a charity (or which would, but for section 14, so appear),
  - (d) a person not falling within paragraph (a) to (c) who appears to OSCR to act, or to represent itself as acting, for or on behalf of—
    - (i) a charity, or
    - (ii) a body falling within paragraph (b) or (c),
  - (e) a person who appears to OSCR to represent a body which is not entered in the Register as a charity,
  - (f) any particular type of charity, of body falling within paragraph (b) or (c), or of person falling within paragraph (d) or (e).
- (2) OSCR may make inquiries under subsection (1) of its own accord or on the representation of any person.
- (3) OSCR may direct any charity, body or person with regard to which it is making inquiries under subsection (1) not to undertake activities specified in the direction for such period of not more than 6 months as is specified in the direction.
- (4) A direction under subsection (3) given to a person falling within paragraph (d) or (e) of subsection (1) may be given only in relation to activities which that person undertakes for or on behalf of the charity or body to which the inquiries relate.
- (5) A direction under subsection (3)—
- (a) may be revoked at any time,
  - (b) may be varied, but not so as to have effect for a period of more than 6 months from the date on which it is given.
- (6) A person who, without reasonable excuse, refuses or fails to comply with a direction under subsection (3) is guilty of an offence.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 4 on the standard scale or imprisonment for a period not exceeding 3 months, or to both.

## 29 Power of OSCR to obtain information for inquiries **S**

- (1) OSCR may by notice require any person to provide to it—
- (a) any document, or a copy of or extract from any document,
  - (b) documents of any type, or copies of or extracts from such documents,
  - (c) any information or explanation,
- which OSCR considers necessary for the purposes of inquiries under section 28.
- (2) The notice must specify—
- (a) the documents, type of documents, copies, extracts, information or explanation which the person is to provide to OSCR,
  - (b) the date (which must be at least 14 days after the date on which the notice is given) by which the person must do so, and
  - (c) the effect of subsection (6).
- (3) Subsection (1) does not authorise OSCR to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

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- (4) OSCR must not disclose any document, information or explanation provided in response to a requirement under subsection (1) except for the purposes of the inquiries in connection with which the requirement was made.
- (5) OSCR may pay to any person a sum in respect of expenses reasonably incurred by the person in complying with a requirement under subsection (1).
- (6) A person who, without reasonable excuse, refuses or fails to comply with a requirement under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale or imprisonment for a period not exceeding 3 months, or to both.

VALID FROM 24/04/2006

### 30 **Removal from Register of charity which no longer meets charity test** **S**

- (1) Where it appears to OSCR, as a result of inquiries under section 28, that a charity no longer meets the charity test it must—
  - (a) direct the charity to take, within such period as may be specified in the direction, such steps as OSCR considers necessary for the purposes of meeting the charity test, or
  - (b) remove the charity from the Register.
- (2) Steps specified in a direction under subsection (1)(a) may include applying to OSCR for approval under section 39 of a reorganisation scheme in relation to the charity's constitution.
- (3) OSCR must, if a charity fails to comply with a direction under subsection (1)(a), remove the charity from the Register.

### 31 **Powers of OSCR following inquiries** **S**

- (1) Subsections (4), (6) and (7) apply where it appears to OSCR, as a result of inquiries under section 28—
  - (a) that there has been misconduct in the administration of—
    - (i) a charity, or
    - (ii) a body controlled by a charity, or
  - (b) that it is necessary or desirable to act for the purpose of protecting the property of a charity or securing a proper application of such property for its purposes.
- (2) Subsections (5) to (7) apply where it appears to OSCR, as a result of inquiries under section 28—
  - (a) that a body which is not a charity is being or has been represented as a charity, or
  - (b) that a charity which is not entitled to refer to itself in either of the ways described in section 13(2) is being or has been represented as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland.

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- (3) Subsections (8) and (9) apply where it appears to OSCR, as a result of inquiries under section 28, that there is or has been misconduct by a person falling within section 28(1)(d) in any activity which the person undertakes for or on behalf of the charity or body referred to in that provision.
- (4) OSCR may, by notice, suspend any person concerned in the management or control of the charity or body who appears to it—
  - (a) have been responsible for or privy to the misconduct,
  - (b) have contributed to, or facilitated, the misconduct, or
  - (c) be unable or unfit to perform that person's functions in relation to the property of the charity or body.
- (5) OSCR may direct—
  - (a) the body representing itself as a charity,
  - (b) the person representing the body as a charity,
  - (c) the charity representing itself as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland, or, as the case may be
  - (d) the person representing the charity as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland,
 to stop doing so.
- (6) OSCR may give a direction 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 charity or body without OSCR's consent.
- (7) OSCR may direct any relevant financial institution or other person holding property on behalf of the charity or body or of any person concerned in its management or control not to part with the property without OSCR's consent.
- (8) OSCR may direct the person—
  - (a) to cease acting, or representing itself as acting, for or on behalf of the charity or body in any activity specified in the direction,
  - (b) to pay to the charity or body, within such period as the direction may specify, any sums which it has collected for the charity or body and which are held by it or by any relevant financial institution or other person on its behalf, after deducting any sums payable to the person or any other person under an agreement with the charity or body.
- (9) OSCR may direct any relevant financial institution or other person holding property which OSCR considers to be, or to represent, sums collected for the charity or body not to part with the property without OSCR's consent.
- (10) OSCR's power to suspend a person by giving notice under subsection (4)(a) or (b) does not apply if OSCR considers that the person has acted honestly and reasonably in relation to the misconduct concerned and ought fairly to be excused.

## 32 Suspensions and directions: procedure **S**

- (1) A suspension under subsection (4) and a direction under any of subsections (5) to (9) of section 31—

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- (a) has effect for such period of not more than 6 months as is specified in the suspension or direction,
  - (b) may be revoked at any time,
  - (c) may be varied, but not so as to have effect for a period of more than 6 months from the date on which the suspension or direction first has effect.
- (2) Where such a suspension has been made or direction has been given, a further suspension or direction may be made or given under section 31 but the further suspension or direction ceases to have effect on the same date as the original suspension or direction (unless stated to cease to have effect earlier).
- (3) A copy of the notice given under section 72 in respect of a—
- (a) suspension under subsection (4) of section 31, or
  - (b) direction under subsection (5)(b) or (d) or (8) of that section,
- must be given to the charity or body in question.
- (4) A copy of the notice given under section 72 in respect of a direction under subsection (7) or (9) of that section must be given to the person directed.
- (5) A person who, without reasonable excuse—
- (a) contravenes a suspension under subsection (4) of section 31, or
  - (b) refuses or fails to comply with a direction under any of subsections (5) to (9) of that section,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a period not exceeding 6 months, or to both.

### 33 Reports on inquiries **S**

- (1) OSCR must prepare a report of the subject matter of inquiries made under section 28 if—
- (a) as a result of the inquiries it—
    - (i) gives a direction, or removes a charity from the Register, under section 30,
    - (ii) suspends a person under subsection (4) of section 31, or
    - (iii) gives a direction under any of subsections (5) to (9) of that section,
 or
  - (b) in any other case, it is requested to do so by the person in respect of whom the inquiries were made and it has not previously prepared a report of the subject matter of those inquiries under this subsection or subsection (2).
- (2) OSCR may prepare a report of the subject matter of any other inquiries under section 28.
- (3) A report prepared under this section may relate to two or more inquiries.
- (4) Apart from identifying the person in respect of whom inquiries were made, a report under this section must not—
- (a) mention the name of any person, or
  - (b) contain any particulars which, in OSCR's opinion—
    - (i) are likely to identify any person, and
    - (ii) can be omitted without impairing the effectiveness of the report,

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unless OSCR considers it is necessary to do so.

(5) OSCR must—

- (a) send a copy of a report prepared under subsection (1) to the person in respect of whom the inquiries were made, and
- (b) publish a report prepared under this section or such other statement of the result of inquiries made under section 28 as OSCR thinks fit in such manner as OSCR thinks fit.

### *Powers of Court of Session*

VALID FROM 01/04/2006

## **34 Powers of Court of Session S**

- (1) Where, on an application by OSCR, it appears to the Court of Session—
  - (a) that there is or has been misconduct in the administration of—
    - (i) a charity, or
    - (ii) a body controlled by a charity (or by two or more charities, when taken together), or
  - (b) that it is necessary or desirable to act for the purpose of protecting the property of a charity or securing a proper application of such property for its purposes,
 the court may exercise any of the powers set out in subsection (5)(a) and (c) to (g).
- (2) Where, on an application by OSCR, it appears to the Court of Session that a body which is not a charity is or has been representing itself as a charity, the court may exercise any of the powers set out in subsection (5)(b) to (g).
- (3) Where, on an application by OSCR, it appears to the Court of Session that a person is or has been representing a body which is not a charity as a charity, the court may exercise any of the powers set out in subsection (5)(f) to (h).
- (4) Where, on an application by OSCR, it appears to the Court of Session that a charity which is not entitled to refer to itself in either of the ways described in section 13(2) is being or has been represented as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland, the court may exercise any of the powers set out in subsections (5)(f), (g) and (i).
- (5) Those powers are power to—
  - (a) interdict (whether temporarily or permanently) the charity or body from such action as the court thinks fit,
  - (b) interdict (whether temporarily or permanently) the body from representing itself as a charity or from such other action as the court thinks fit,
  - (c) appoint a judicial factor (whether temporarily or permanently) to manage the affairs of the charity or body,
  - (d) where the charity or body is a trust, appoint a trustee,
  - (e) suspend or remove any person concerned in the management or control of the charity or body,

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- (f) order any relevant financial institution or other person holding property on behalf of the charity or body or of any person concerned in its management or control not to part with the property without the court's consent,
  - (g) make an order 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 charity or body without the court's consent,
  - (h) interdict (whether temporarily or permanently) the person from representing the body as a charity or from such other action as the court thinks fit,
  - (i) interdict (whether temporarily or permanently) the charity or, as the case may be, the person from representing the charity as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland or from such other action as the court thinks fit.
- (6) Where the court appoints a trustee in pursuance of subsection (5)(d), section 22 of the Trusts (Scotland) Act 1921 (c. 58) applies as if the trustee had been appointed under that section.
- (7) The power in subsection (5)(g) applies despite anything in the constitution of the charity or body.
- (8) Subsection (9) applies where, on an application by OSCR, it appears to the Court of Session that there is or has been misconduct by a person falling within section 28(1)(d) in any activity which the person undertakes for or on behalf of the charity or body referred to in that provision.
- (9) The court may—
- (a) interdict (whether temporarily or permanently) the person from acting, or representing itself as acting, on behalf of the charity or body,
  - (b) order the person to pay to the charity or body any sums which it has collected for the charity or body and which are held by it, any relevant financial institution or other person holding money on its behalf, after deducting any sums payable to the person or any other person under an agreement with the charity or body,
  - (c) order any relevant financial institution or other person holding property which the court considers to be, or to represent, sums collected for the charity or body not to part with the property without the court's consent.
- (10) The court may—
- (a) recall the suspension of a person in pursuance of subsection (5)(e),
  - (b) vary or recall an order in pursuance of subsection (5)(f) or (g) or under subsection (9)(b) or (c).

## 35 Transfer schemes **S**

- (1) The Court of Session may, on an application by OSCR, approve a scheme prepared by OSCR in accordance with regulations made by the Scottish Ministers for the transfer to a charity specified in the scheme of any assets of—
- (a) another charity,
  - (b) a body which is controlled by a charity (or by two or more charities, when taken together),



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- (c) a body which is not a charity but which is or has been representing itself as a charity.
- (2) The court may approve a scheme in relation to a charity only if it is satisfied—
- (a) that there is or has been misconduct in the administration of the charity,
  - (b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application of such property for its purposes, and
  - (c) that the charity's purposes would be better achieved by transferring its assets to another charity.
- (3) The court may approve a scheme in relation to a body falling within paragraph (b) of subsection (1) only if it is satisfied—
- (a) that there is or has been misconduct in the administration of the body or any of the charities which control it,
  - (b) that it is necessary or desirable to act for the purpose of protecting the property of the body or any such charity, and
  - (c) that the transfer provided for by the scheme is reasonable.
- (4) The court may approve a scheme in relation to a body falling within paragraph (c) of subsection (1) only if it is satisfied—
- (a) that the body falls within that paragraph, and
  - (b) that the transfer provided for by the scheme is reasonable.
- (5) The court may approve a scheme under this section subject to modifications.
- (6) A charity receiving property in pursuance of a scheme approved under this section may apply that property for its purposes as it thinks fit.

VALID FROM 01/04/2006

### 36 Powers in relation to English and Welsh charities **S**

- (1) Subsection (2) applies where the Charity Commissioners for England and Wales inform OSCR that a relevant financial institution or other person in Scotland holds moveable property on behalf of a body—
- (a) which is registered as a charity in England and Wales under section 3 of the Charities Act 1993 (c. 10), or
  - (b) which, by virtue of section 3(5) of that Act, is not required to register as a charity under that section.
- (2) The Court of Session may, on an application by OSCR, make an order requiring the relevant financial institution or other person not to part with the property without the court's consent.
- (3) An order under subsection (2) may be made subject to conditions and may be varied or recalled.
- (4) Where the court has made an order under subsection (2) and, on an application by OSCR, it is satisfied as to the matters set out in subsection (5) it may transfer the property to a charity specified in the application—



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- (a) which has purposes which are the same as or which resemble closely the purposes of the body whose property is transferred, and
  - (b) which has intimated that it is prepared to receive the property.
- (5) Those matters are—
- (a) that there has been misconduct in the administration of the body, and
  - (b) that it is necessary or desirable to transfer the property for the purpose of protecting it or securing a proper application of it for the purposes of the body from which it is to be transferred.

VALID FROM 01/04/2006

### 37 Expenses **S**

In proceedings before it under sections 34 to 36 in relation to a charity, the Court of Session may, instead of awarding expenses against the charity, award expenses against a charity trustee of the charity or against any two or more of its charity trustees jointly and severally.

VALID FROM 01/04/2006

### *Supplemental*

### 38 Delegation of functions **S**

- (1) It is for the Scottish Ministers to exercise OSCR's functions under sections 28 to 35 (other than section 30), and any of its general functions relating to those provisions, in so far as they are exercisable in relation to—
  - (a) charities which are registered social landlords,
  - (b) bodies controlled by any such charity (or by two or more such charities, when taken together), and
  - (c) persons acting for or on behalf of any such charity or body.
- (2) OSCR may authorise any Scottish public authority with mixed functions or no reserved functions to exercise any of the functions referred to in subsection (1) in so far as they are exercisable in relation to—
  - (a) such charities or bodies, or types of charity or body, as OSCR may specify in the authorisation, and
  - (b) persons acting for or on behalf of those charities or bodies.
- (3) Such an authorisation may be made only if the authorised person has other regulatory functions conferred on it by an enactment in relation to the charities or types of charity in respect of which the authorisation is made.
- (4) OSCR must send a copy of such an authorisation to each charity to which it relates.
- (5) OSCR must, before making such an authorisation, consult such persons (including the person it proposes to authorise) as it thinks fit.

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- (6) OSCR may, at any time, withdraw an authorisation under subsection (2) (and subsections (4) and (5) apply in relation to such a withdrawal as they apply in relation to an authorisation).
- (7) Subsection (1) does not prevent OSCR from authorising, under subsection (2), the Scottish Ministers to exercise functions in relation to a person other than a registered social landlord.
- (8) It is not competent for OSCR to exercise any of its functions which are, by virtue of subsection (1) or (2), delegated to another public body or office-holder (unless it considers it necessary or expedient to do so in relation to its functions under section 30).
- (9) Sections 24 to 26 apply in relation to a public body or office-holder to whom OSCR's functions are delegated by virtue of subsection (1) or (2) as they apply to OSCR, but subject to the following modifications—
  - (a) references in those sections to OSCR and to OSCR's functions are to be read as references to the public body or office-holder and to the functions delegated to it, and
  - (b) the reference in section 25(1)(d) to section 46 is to be read as a reference to subsection (10).
- (10) Where any of OSCR's functions are delegated to another public body or office-holder by virtue of subsection (1) or (2), a person to whom section 46 applies—
  - (a) must report to the body or office-holder on any matter which the person would, but for that delegation, be required by section 46(2) to report on to OSCR,
  - (b) may report to the body or office-holder on any matter which the person would, but for that delegation, be authorised by subsection 46(3) to report on to OSCR.
- (11) A duty or power which arises under subsection (10) is not affected if the person in relation to whom it arises subsequently stops acting in the capacity mentioned in section 46(1).
- (12) In this section “registered social landlord” means a body registered in the register maintained under section 57(1) of the Housing (Scotland) Act 2001 (asp 10).

## CHAPTER 5 **S**

### REORGANISATION OF CHARITIES

#### 39 **Reorganisation of charities: applications by charity **S****

- (1) OSCR may, on the application of a charity, approve a reorganisation scheme proposed by the charity if it considers—
  - (a) that any of the reorganisation conditions is satisfied in relation to the charity, and
  - (b) that the proposed reorganisation scheme will—
    - (i) where the condition satisfied is that set out in paragraph (a) or (b) of section 42(2), enable the resources of the charity to be applied

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- to better effect for charitable purposes consistently with the spirit of its constitution, having regard to changes in social and economic conditions since it was constituted, or
- (ii) where the condition satisfied is that set out in paragraph (c) of that section, enable the charity to be administered more effectively.
- (2) The Scottish Ministers may by regulations make such provision as they think fit in relation to the procedure for applying for and determining applications under this section.
- (3) Such regulations may in particular make provision about—
- (a) the form and manner in which applications must be made,
  - (b) the period within which OSCR must make a decision on an application,
  - (c) publication of proposed reorganisation schemes,
- and may make different provision in relation to different types of charity.

VALID FROM 31/05/2007

#### 40 Reorganisation of charities: applications by OSCR **S**

- (1) Where OSCR considers—
- (a) that any of the reorganisation conditions is satisfied in relation to a charity, and
  - (b) that a reorganisation scheme proposed by it or by the charity trustees of the charity will—
    - (i) where the condition satisfied is that set out in paragraph (a) or (b) of section 42(2), enable the resources of the charity to be applied to better effect for charitable purposes consistently with the spirit of its constitution, having regard to changes in social and economic conditions since it was constituted, or
    - (ii) where the condition satisfied is that set out in paragraph (c) of that section, enable the charity to be administered more effectively,
- OSCR may, of its own accord or on the application of the charity trustees of the charity, apply to the Court of Session for approval of the scheme.
- (2) The Court of Session may, on an application under subsection (1), approve the proposed reorganisation scheme if it considers that the matters set out in paragraphs (a) and (b) of that subsection are satisfied in relation to the charity to which the application relates.
- (3) The charity trustees of a charity may enter appearance as a party in proceedings on an application under subsection (1) in relation to the charity.
- (4) OSCR must, not less than 28 days before making an application under subsection (1), notify the charity in question of its intention to do so.

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**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Charities and Trustee Investment (Scotland) Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

VALID FROM 31/05/2007

#### 41 Approved schemes **S**

A charity may, despite any provision of its constitution having contrary effect, proceed with any variation, transfer or amalgamation for which an approved reorganisation scheme makes provision.

VALID FROM 31/05/2007

#### 42 Reorganisation: supplementary **S**

- (1) This section applies for the interpretation of Chapter 5.
- (2) The “reorganisation conditions” are—
  - (a) that some or all of the purposes of the charity—
    - (i) have been fulfilled as far as possible or adequately provided for by other means,
    - (ii) can no longer be given effect to (whether or not in accordance with the directions or spirit of its constitution),
    - (iii) have ceased to be charitable purposes, or
    - (iv) have ceased in any other way to provide a suitable and effective method of using its property, having regard to the spirit of its constitution,
  - (b) that the purposes of the charity provide a use for only part of its property, and
  - (c) that a provision of the charity's constitution (other than a provision setting out the charity's purposes) can no longer be given effect to or is otherwise no longer desirable.
- (3) A “reorganisation scheme” is a scheme for—
  - (a) variation of the constitution of the charity (whether or not in relation to its purposes),
  - (b) transfer of the property of the charity (after satisfaction of any liabilities) to another charity (whether or not involving a change to the purposes of the other charity), or
  - (c) amalgamation of the charity with another charity.
- (4) Nothing in section 40 affects the power of the Court of Session to approve a cy près scheme in relation to a charity.
- (5) Sections 39 and 40 do not apply to any charity constituted under a Royal charter or warrant or under any enactment.
- (6) But, despite subsection (5), those sections do apply to an endowment if its governing body is a charity.

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(7) In subsection (6), “endowment” and “governing body” have the same meaning as in Part 6 (reorganisation of endowments) of the Education (Scotland) Act 1980 (c. 44).

VALID FROM 01/04/2006

### 43 Endowments **S**

In section 122 (interpretation of Part 6) of the Education (Scotland) Act 1980 (c. 44), after subsection (3) insert—

“(4) This Part, apart from section 104, does not apply in relation to any endowment the governing body of which is a charity within the meaning of section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).”

## CHAPTER 6 **S**

### CHARITY ACCOUNTS

*Duty to keep accounts etc.*

### 44 Accounts **S**

(1) A charity must—

- (a) keep proper accounting records,
- (b) prepare for each financial year of the charity a statement of account, including a report on its activities in the financial year,
- (c) have the statement of account independently examined or audited, and
- (d) after such examination or audit, send a copy of the statement of account to OSCR,

in accordance with regulations under subsection (4).

(2) Accounting records kept in pursuance of subsection (1)(a) must be preserved by the charity for 6 years from the end of the financial year in which they are made.

(3) Subsection (2) is without prejudice to any other enactment or rule of law.

(4) The Scottish Ministers may by regulations make provision about the matters referred to in subsection (1) including—

- (a) the meaning of “financial year”,
- (b) the information to be contained in the accounting records and statement of account,
- (c) the manner in which that information is to be presented,
- (d) the keeping and preservation of the accounting records,
- (e) the methods and principles according to which, and the time by which, the statement of account is to be prepared,

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- (f) the time by which the copy statement of account is to be sent to OSCR,
  - (g) examination or audit of the statement of account,
  - (h) such other matters in relation to the accounts of a charity as the Scottish Ministers think necessary or expedient.
- (5) Regulations under subsection (4) may make different provision in relation to different types of charity, including provision exempting charities of a particular type from some or all of the requirements of this section.

VALID FROM 01/04/2006

#### 45 Failure to provide statement of account **S**

- (1) This section applies where a charity fails, within such period as is specified in regulations under section 44(4), to send a copy of a statement of account to OSCR in pursuance of subsection (1)(d) of that section.
- (2) OSCR may, after notifying the charity of its intention to do so, appoint a suitably qualified person (an “appointed person”) to prepare such a statement of account.
- (3) An appointed person is entitled—
- (a) on giving reasonable notice, to enter premises occupied by the charity at all reasonable times,
  - (b) to have access to, and take possession of, any document appearing to the appointed person to relate to the financial affairs of the charity, and
  - (c) to require any charity trustee, or agent or employee, of the charity to give the person such assistance, information or explanation as the appointed person may reasonably require.
- (4) The charity trustees of the charity are personally liable jointly and severally for—
- (a) any costs incurred by OSCR in relation to the appointment of the appointed person, and
  - (b) the expenses of the appointed person in performing that person's functions under this section.
- (5) The appointed person must—
- (a) send to OSCR the statement of account prepared in pursuance of subsection (2),
  - (b) submit to OSCR a report on the affairs and accounting records of the charity, and
  - (c) send a copy of the statement of account and report to each person appearing to the appointed person to be a charity trustee of the charity.
- (6) A person who, without reasonable excuse, refuses or fails to comply with a requirement of an appointed person under subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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VALID FROM 01/04/2006

### *Duty to report matters to OSCR*

#### **46 Duty of auditors etc. to report matters to OSCR S**

- (1) This section applies to—
- (a) any person appointed to carry out an independent examination or audit of a charity's statement of account (including, in the case of a charity which is a company, any person appointed as auditor under Chapter 5 of Part 11 of the Companies Act 1985 (c. 6)), and
  - (b) any person appointed for the purposes of section 249A(2) of that Act to prepare a report on the accounts of a charity which is a company, who is acting in the appointed capacity.
- (2) A person to whom this section applies who becomes aware of any matter—
- (a) which relates to the activities or affairs of—
    - (i) the charity, or
    - (ii) any institution or body corporate connected to that charity, and
  - (b) which the person has reasonable cause to believe is likely to be of material significance for the purposes of the exercise by OSCR of its functions under section 28, 30 or 31,
- must immediately report on the matter to OSCR.
- (3) A person to whom this section applies who becomes aware of any matter—
- (a) which does not appear to the person to be one which the person is required to report under subsection (2), but
  - (b) which the person has reasonable cause to believe is likely to be relevant for the purposes of the exercise by OSCR of any of its functions,
- may report on the matter to OSCR.
- (4) A duty or power which arises under subsection (2) or (3) is not affected if the person in relation to whom it arises subsequently stops acting in the capacity mentioned in subsection (1).
- (5) An institution or body corporate is connected to a charity if—
- (a) it is an institution which is controlled (whether directly or through one or more nominees) by, or, as the case may be
  - (b) it is a body corporate in which a substantial interest is held by, the charity or any one or more of the charity trustees acting in that capacity.
- (6) Section 105 sets out when a person is to be treated as controlling an institution or as having a substantial interest in a body corporate.



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### Dormant charity accounts

VALID FROM 01/04/2006

#### 47 Dormant accounts of charities **S**

- (1) Subsection (3) applies where—
  - (a) a relevant financial institution (whether or not in response to a request from OSCR) informs OSCR that every account held by the institution in the name of or on behalf of a body appearing to the institution to be a relevant body is dormant,
  - (b) OSCR is satisfied that the body is a relevant body, and
  - (c) OSCR is unable, after making reasonable inquiries, to locate any person concerned in the management or control of the body.
- (2) A relevant body is one which is, has at any time been or, in the case of a body which has ceased to exist, was prior to such cessation—
  - (a) a charity, or
  - (b) entitled by virtue of section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) to describe itself as a “Scottish charity”.
- (3) OSCR must transfer the amount standing to the credit of the relevant body in the dormant accounts (less any amount which it is authorised by regulations under section 48(1) to retain) to—
  - (a) such charity as OSCR may determine, having regard to the purposes of the relevant body and the purposes of the charity, or
  - (b) where OSCR is unable to ascertain the purposes of the relevant body, to such charity as OSCR considers appropriate.
- (4) For the purposes of subsection (3), OSCR may effect any transaction in relation to the dormant accounts (including a transaction closing any such account).
- (5) Where under subsection (3) OSCR transfers an amount to 2 or more charities, it may divide the amount among those charities as it thinks fit.
- (6) A charity to which an amount is transferred under this section may apply the amount for its purposes as it thinks fit.
- (7) The receipt by—
  - (a) OSCR of an amount withdrawn or transferred from an account by virtue of this section is a complete discharge of the relevant financial institution, or
  - (b) a charity of an amount received from OSCR by virtue of this section is a complete discharge of OSCR,
 in respect of the amount.
- (8) OSCR's power under subsection (3) ceases—
  - (a) if the relevant financial institution by which the accounts are held informs OSCR that the accounts (or any of them) are no longer dormant, or

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- (b) if OSCR becomes aware of the identity of a person concerned in the management or control of the relevant body and informs the relevant financial institution of that fact.

#### 48 **Dormant accounts of charities: procedure and interpretation** **S**

- (1) The Scottish Ministers may, by regulations, make provision as to—
- (a) the procedure to be followed by OSCR under section 47,
  - (b) the extent to which OSCR, in transferring an amount under subsection (3) of that section, may retain a sum in respect of its expenses in exercising its functions under that section.
- (2) An account is dormant for the purposes of section 47 if no transaction other than—
- (a) a payment into the account, or
  - (b) a transaction effected by the relevant financial institution holding the account,
- has been effected in relation to the account within the period of 5 years immediately preceding the dormancy date.
- (3) An account is no longer dormant for the purposes of that section if a transaction other than—
- (a) a payment into the account,
  - (b) a transaction effected by the relevant financial institution holding the account, or
  - (c) a transaction effected by OSCR in pursuance of subsection (3) of that section, is effected after the dormancy date.
- (4) The dormancy date is the date on which the institution informs OSCR as mentioned in section 47(1)(a).

VALID FROM 21/01/2011

### CHAPTER 7 **S**

#### SCOTTISH CHARITABLE INCORPORATED ORGANISATIONS

##### *Nature and constitution*

VALID FROM 01/04/2011

#### 49 **Scottish charitable incorporated organisations** **S**

- (1) A charity may be constituted as a Scottish charitable incorporated organisation (a “SCIO”).
- (2) A SCIO is a body corporate having—
- (a) a constitution,

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- (b) a principal office in Scotland,
  - (c) 2 or more members.
- (3) Its membership may, but need not, consist of or include some or all of its charity trustees.
- (4) The members are not liable to contribute to the assets of the SCIO if it is wound up.

## 50 Constitution and powers **S**

- (1) A SCIO's constitution must state its name and its purposes.
- (2) A SCIO's constitution must make provision—
- (a) about who is eligible for membership, and how a person becomes a member, and
  - (b) for the appointment of 3 or more persons (“charity trustees”) who are to be charged with the general control of the SCIO's administration, and about any conditions of eligibility for becoming a charity trustee.
- (3) A SCIO's constitution must also provide for such other matters, and comply with such requirements, as are specified in regulations made by the Scottish Ministers.
- (4) A SCIO must use and apply its property in furtherance of its purposes and in accordance with its constitution.
- (5) Subject to anything in its constitution, a SCIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.
- (6) For the purposes of managing the affairs of a SCIO, its charity trustees may exercise all the SCIO's powers.

VALID FROM 01/04/2011

## 51 General duty of members of SCIO **S**

Subsections (1)(a), (3) and (4) of section 66 apply to the members of a SCIO who are not charity trustees as they apply to its charity trustees.

## 52 Name and status **S**

- (1) The name of a SCIO must appear in legible characters on—
- (a) such documents issued by or on behalf of the SCIO,
  - (b) such documents signed by or on behalf of the SCIO,
- as may be specified in regulations made by the Scottish Ministers.
- (2) Subsection (3) applies where the name of a SCIO does not include—
- (a) “Scottish charitable incorporated organisation”, or
  - (b) “SCIO” (with or without a full stop after each letter),
- whether or not capital letters are used.

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(3) Where this subsection applies, the fact that a SCIO is a SCIO must be stated in legible characters in all the documents referred to in subsection (1).

(4) Section 15 does not apply in relation to a SCIO.

[<sup>F1</sup>(5) For the purposes of this section, a reference to a document—

- (a) issued by or on behalf of the SCIO , or
- (b) signed by or on behalf of the SCIO ,

includes a reference to a web page on a website operated by or on behalf of the SCIO.]

#### Textual Amendments

**F1** S. 52(5) inserted (1.8.2010) by Public Services Reform (Scotland) Act 2010 (asp 8), ss. 120(2), 134(7); S.S.I. 2010/221, art. 3(2), Sch.

VALID FROM 01/04/2011

#### 53 Offences etc. **S**

(1) A charity trustee of a SCIO or a person on the SCIO's behalf who—

- (a) issues, or authorises the issue of, any document referred to in subsection (1)(a) of section 52, or
- (b) signs, or authorises the signature on behalf of the SCIO of, any document referred to in subsection (1)(b) of that section,

which does not comply with subsections (1) and (3) of that section is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) OSCR may direct—

- (a) any body which is not a SCIO and which is representing itself as being a SCIO,
  - (b) any person who is representing that any such body is a SCIO,
- to stop doing so by such date as OSCR may direct.

(3) The Court of Session may, on an application by OSCR, interdict—

- (a) any body which is not a SCIO from representing itself as a SCIO,
- (b) a person who is representing that such a body is a SCIO from doing so.

(4) OSCR may not apply for such an interdict against a body or person unless the body or person has failed to comply with a direction under subsection (2).

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VALID FROM 01/04/2011

### *Creation of SCIO and entry in Register*

#### **54 Application for creation of SCIO** **S**

- (1) Any 2 or more individuals may apply to OSCR for a SCIO to be constituted and for its entry in the Register.
- (2) The application must—
  - (a) state the name of the SCIO,
  - (b) state the proposed principal office of the SCIO,
  - (c) be accompanied by a copy of the SCIO's proposed constitution,
  - (d) contain such other information, and be accompanied by such other documents, as may be—
    - (i) required by regulations under section 6(1), or
    - (ii) otherwise required by OSCR.
- (3) OSCR may grant the application only if it considers that the SCIO, if constituted, would meet the charity test.
- (4) OSCR must refuse the application if—
  - (a) it considers that the SCIO's proposed name falls within section 10,
  - (b) the SCIO's proposed constitution does not comply with one or more of the requirements of section 50 and any regulations made under that section, or
  - (c) the application must, by virtue of regulations under section 6(1), be refused,
 but must not otherwise refuse an application if it considers that the SCIO, if constituted, would meet the charity test.
- (5) Sections 4 and 5 do not apply in relation to an application under subsection (1).

#### **55 Entry in Register** **S**

- (1) If OSCR grants an application under section 54(1) it must enter the SCIO to which the application relates in the Register.
- (2) On the entry in the Register being made in accordance with subsection (5), subsections (3) and (4) apply.
- (3) The SCIO becomes by virtue of this subsection a body corporate—
  - (a) whose constitution is that proposed in the application,
  - (b) whose name is that specified in the constitution, and
  - (c) whose first members are the individuals who made the application.
- (4) All property for the time being vested in those individuals (or any of them) on trust for the charitable purposes of the SCIO (when constituted) vests by virtue of this subsection in the SCIO.

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- (5) The entry for the SCIO in the Register must (in addition to the matters required by section 3(3)) include—
  - (a) the date when the entry was made, and
  - (b) a note stating that the charity is constituted as a SCIO.
- (6) OSCR must send a copy of the entry in the Register to the SCIO at its principal office.
- (7) If a SCIO ceases to be a charity, it ceases to be a SCIO.

VALID FROM 01/01/2012

*Conversion, amalgamation and transfer*

**56 Conversion of charity which is a company or registered friendly society: applications** **S**

- (1) The following may apply to OSCR to be converted into a SCIO, and for the SCIO's entry in the Register—
  - (a) a charity which is a company,
  - (b) a charity which is a registered society within the meaning of the Industrial and Provident Societies Act 1965 (c. 12).
- (2) But such an application may not be made—
  - (a) by a company or registered society having a share capital if any of the shares are not fully paid up,
  - (b) by a company having only a single member.
- (3) Such an application is referred to in this section and sections 57 and 58 as an “application for conversion”.
- (4) Section 54(2) applies in relation to an application for conversion as it applies to an application for a SCIO to be constituted (but sections 4 and 5 do not apply in relation to an application for conversion).
- (5) In addition to the documents referred to in section 54(2), the application for conversion must be accompanied by—
  - (a) a copy of the resolution of the company or registered society that it be converted into a SCIO, and
  - (b) a copy of the resolution of the company or registered society adopting the proposed constitution of the SCIO.
- (6) The resolution referred to in subsection (5)(a) must be—
  - (a) a special resolution of the company or registered society, or
  - (b) a unanimous written resolution signed by or on behalf of all the members of the company or registered society who would be entitled to vote on a special resolution.

[<sup>F2</sup>(6A) In the case of a company which is [<sup>F3</sup> registered under the Companies Act 2006 in Scotland ], Chapter 3 of Part 3 [<sup>F4</sup> of that Act ] (resolutions and agreements

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affecting a company's constitution) does not apply to the resolutions mentioned in subsection (5)(a) and (b).]

- (7) In the case of a registered society, “special resolution” has the meaning given in section 52(3) of the Industrial and Provident Societies Act 1965 (c. 12).

#### Textual Amendments

- F2** S. 56(6A) inserted (1.10.2007) by [Companies Act 2006 \(Commencement No.3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 1(3)(a), **Sch. 4 para. 110** (with art. 12)
- F3** Words in s. 56(6A) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 250(2)(a)** (with art. 10)
- F4** Words in s. 56(6A) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 250(2)(b)** (with art. 10)

## 57 Determination of application for conversion **S**

- (1) Before determining an application for conversion, OSCR must consult—
- (a) the appropriate registrar, and
  - (b) such other persons as it thinks fit,
- about whether the application should be granted.
- (2) OSCR may grant an application for conversion only if it considers that the charity, if converted into a SCIO as proposed, would continue to meet the charity test.
- (3) OSCR must refuse an application for conversion if—
- (a) it considers that the SCIO's proposed name falls within section 10,
  - (b) the SCIO's proposed constitution does not comply with one or more of the requirements of section 50 and any regulations made under that section, or
  - (c) the application must, by virtue of regulations under section 6(1), be refused.
- (4) If OSCR considers that a charity, if converted into a SCIO as proposed in an application for conversion, would continue to meet the charity test, OSCR may refuse the application on grounds other than those set out in subsection (3) only if it is satisfied by any representations received from those whom it consulted under subsection (1) that such a refusal would be appropriate.

## 58 Conversion: supplementary **S**

- (1) If OSCR grants an application for conversion, it must—
- (a) enter the SCIO in the Register,
  - (b) send to the appropriate registrar a copy of each of the resolutions of the converting company or registered society referred to in section 56(5) and a copy of the entry in the Register relating to the SCIO, and
  - (c) once the SCIO's constitution as a SCIO has taken effect, remove from the Register the entry for the converting company or registered society.



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- (2) The entry for the SCIO in the Register must, for so long as its constitution as a SCIO has not yet taken effect, include a note stating that fact.
- (3) If the appropriate registrar—
  - (a) registers the documents sent under subsection (1)(b), and
  - (b) cancels the registration of the company under [<sup>F5</sup>the Companies Act 2006], or of the society under the Industrial and Provident Societies Act 1965 (c. 12),subsections (4) and (5) apply.
- (4) The company or registered society is by virtue of this subsection converted into a SCIO, being a body corporate—
  - (a) whose constitution is that proposed in the application for conversion,
  - (b) whose name is that specified in the constitution, and
  - (c) whose first members are the members of the converting company or society immediately before the moment of conversion.
- (5) All property, rights and liabilities of the converting company or registered society become by virtue of this subsection the property, rights and liabilities of the SCIO.
- (6) The entry for the SCIO in the Register must include—
  - (a) a note stating that the charity is constituted as a SCIO,
  - (b) the date on which it became so constituted, and
  - (c) a note of the name of the company or society which was converted into the SCIO.
- (7) In section 57 and in this section, the “appropriate registrar” means—
  - (a) in the case of an application for conversion by a company, the registrar of companies <sup>F6</sup>...,
  - (b) in the case of an application for conversion by a registered society, the Financial Services Authority.

#### Textual Amendments

- F5** Words in s. 58(3)(b) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 250\(3\)\(a\)](#) (with art. 10)
- F6** Words in s. 58(7)(a) omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 250\(3\)\(b\)](#) (with art. 10)

#### Commencement Information

- I1** S. 58 in force at 1.1.2012 by [S.S.I. 2011/20](#), art. 2(4)(c)

## 59 Amalgamation of SCIOs **S**

- (1) Any 2 or more SCIOs (“the old SCIOs”) may, in accordance with this section, apply to OSCR to be amalgamated, and for a new SCIO (“the new SCIO”) to be constituted and entered in the Register as their successor.

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- (2) Such an application is referred to in this section and section 60 as an “application for amalgamation”.
- (3) Subsections (2) to (4) of section 54 apply in relation to an application for amalgamation as they apply to an application for a SCIO to be constituted, but with references to the SCIO being read as references to the new SCIO (but sections 4 and 5 do not apply in relation to an application for amalgamation).
- (4) In addition to the documents and information referred to in section 54(2), the application for amalgamation must be accompanied by—
  - (a) a copy of a resolution of each of the old SCIOs approving the proposed amalgamation, and
  - (b) a copy of a resolution of each of the old SCIOs adopting the proposed constitution of the new SCIO.
- (5) The resolutions must be passed—
  - (a) by a two-thirds majority of those voting at a general meeting of the SCIO (including those voting by proxy or by post, if voting that way is permitted), or
  - (b) unanimously by the SCIO's members, otherwise than at a general meeting.

## **60 Amalgamation: supplementary** S

- (1) If OSCR grants an application for amalgamation, it must—
  - (a) enter the new SCIO in the Register, and
  - (b) remove from the Register the entries for the old SCIOs.
- (2) On the new SCIO being entered in the Register it becomes by virtue of this section a body corporate—
  - (a) whose constitution is that proposed in the application for amalgamation,
  - (b) whose name is that specified in the constitution, and
  - (c) whose first members are the members of the old SCIOs immediately before the new SCIO was entered in the Register.
- (3) On the removal of the old SCIOs from the Register—
  - (a) all the property, rights and liabilities of each of the old SCIOs become by virtue of this subsection the property, rights and liabilities of the new SCIO, and
  - (b) each of the old SCIOs is dissolved.
- (4) The entry for the new SCIO in the Register must include—
  - (a) a note stating that it is constituted as a SCIO,
  - (b) the date on which it became so constituted, and
  - (c) a note that it was constituted following amalgamation, and of the name of each of the old SCIOs.
- (5) OSCR must send a copy of the entry in the Register to the new SCIO at its principal office.

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## 61 Transfer of SCIO's undertaking **S**

- (1) A SCIO may resolve that all its property, rights and liabilities should be transferred to another SCIO specified in the resolution.
- (2) Where a SCIO has passed such a resolution, it must send to OSCR—
  - (a) a copy of the resolution, and
  - (b) a copy of a resolution of the transferee SCIO agreeing to the transfer to it.
- (3) A resolution referred to in subsections (1) and (2)(b) must be passed—
  - (a) by a two-thirds majority of those voting at a general meeting of the SCIO (including those voting by proxy or by post, if voting that way is permitted), or
  - (b) unanimously by the SCIO's members, otherwise than at a general meeting.
- (4) The resolution referred to in subsection (1) does not take effect until confirmed by OSCR.
- (5) If OSCR confirms the resolution—
  - (a) all the property, rights and liabilities of the transferor SCIO become by virtue of this subsection the property, rights and liabilities of the transferee SCIO in accordance with the resolution,
  - (b) the transferor SCIO is dissolved, and
  - (c) OSCR must remove from the Register the entry for the transferor SCIO.

### General

VALID FROM 01/04/2011

## 62 Third parties **S**

- (1) A person dealing with a SCIO in good faith and for value is not concerned to inquire whether—
  - (a) anything in the SCIO's constitution prevents it acting in the way that it is, or
  - (b) any constitutional limitations on the powers of the SCIO's charity trustees prevent them from binding the SCIO or authorising others to do so.
- (2) Nothing in subsection (1) prevents a person from bringing proceedings for interdict in respect of the doing of an act which—
  - (a) the SCIO, because of anything in its constitution, does not have power to do, or
  - (b) the SCIO's charity trustees, because of any constitutional limitations on their powers, do not have power to do.
- (3) But no such proceedings may be brought in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the SCIO.
- (4) Subsection (3) does not prevent OSCR from exercising any of its powers.

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- (5) Nothing in subsection (1)(b) affects any liability incurred by the SCIO's charity trustees (or any of them) for doing anything which, because of any constitutional limitations on their powers, the trustees (or that trustee) do not have power to do.
- (6) Nothing in subsection (1) absolves the SCIO's charity trustees from their duty to act within the SCIO's constitution and in accordance with any constitutional limitations on their powers.
- (7) In this section “constitutional limitations” on the powers of a SCIO's charity trustees are limitations on their powers under its constitution, including limitations deriving from a resolution of the SCIO in general meeting, or from an agreement between the SCIO's members.

VALID FROM 01/04/2011

### 63 Amendment of constitution **S**

- (1) A SCIO may by resolution of its members amend its constitution (and a single resolution may provide for more than one amendment).
- (2) Such a resolution must be passed—
  - (a) by a two-thirds majority of those voting at a general meeting of the SCIO (including those voting by proxy or by post, if voting that way is permitted), or
  - (b) unanimously by the SCIO's members, otherwise than at a general meeting.
- (3) The date of passing of such a resolution is—
  - (a) the date of the general meeting at which it was passed, or
  - (b) if it was passed otherwise than at a general meeting, the date on which the last member agreed to it.

### 64 Regulations relating to SCIOs **S**

The Scottish Ministers may by regulations make further provision in relation to SCIOs including, in particular, provision about—

- (a) applications for constitution as, or conversion into, a SCIO, the determination of applications, entry in the Register and the effect of such entry,
- (b) the administration of a SCIO,
- (c) amalgamation of SCIOs and transfer of a SCIO's property, rights and liabilities to another SCIO,
- (d) the winding up, insolvency or dissolution of a SCIO,
- (e) the maintenance of registers of information about SCIOs (for example, registers of members, of charity trustees or of charges over the SCIO's assets),
- (f) such other matters in connection with the provision made by this Chapter as they think fit.

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VALID FROM 01/04/2006

## CHAPTER 8 **S**

### RELIGIOUS CHARITIES

#### 65 Designated religious charities **S**

- (1) OSCR may designate as a designated religious charity a charity which appears to it to have—
- (a) the advancement of religion as its principal purpose,
  - (b) the regular holding of public worship as its principal activity,
  - (c) been established in Scotland for at least 10 years,
  - (d) a membership of at least 3,000 persons who are—
    - (i) resident in Scotland, and
    - (ii) at least 16 years of age, and
  - (e) an internal organisation such that—
    - (i) one or more authorities in Scotland exercise supervisory and disciplinary functions in respect of the component elements of the charity, and
    - (ii) those elements are subject to requirements as to keeping accounting records and audit of accounts which appear to OSCR to correspond to those required by section 44.
- (2) OSCR may determine that subsection (1)(c) need not be satisfied in the case of a charity—
- (a) created by the amalgamation of 2 or more charities each of which, immediately before the amalgamation—
    - (i) was a designated religious charity, or
    - (ii) was, in OSCR's opinion, eligible for designation as such, or
  - (b) constituted by persons who have removed themselves from membership of a charity which, immediately before the removal—
    - (i) was a designated religious charity, or
    - (ii) was, in OSCR's opinion, eligible for designation as such.
- (3) The provisions set out in subsection (4) do not apply to—
- (a) a designated religious charity,
  - (b) any component element of a designated religious charity which is itself a charity (whether or not having as its principal purpose the advancement of religion).
- (4) Those provisions are—
- subsections (1) and (6) of section 16 (in so far as those subsections relate to any action set out in subsection (2)(b) to (d) of that section),
  - section 28(3),
  - section 31(4) and (6),
  - section 34(5)(c) to (e),
  - section 69.

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- (5) OSCR may, by notice served on a designated religious charity, withdraw the designation of the charity as such where—
- (a) it appears to OSCR that one or more of paragraphs (a) to (e) of subsection (1) is no longer satisfied in relation to the charity, or
  - (b) in consequence of an investigation of any component element of the charity under section 28, OSCR has given a direction under section 31(5) in relation to the component element and considers that it is no longer appropriate for the charity to be a designated religious charity.

VALID FROM 01/04/2006

## CHAPTER 9 **S**

### CHARITY TRUSTEES

#### *General duties*

#### **66 Charity trustees: general duties **S****

- (1) A charity trustee must, in exercising functions in that capacity, act in the interests of the charity and must, in particular—
- (a) seek, in good faith, to ensure that the charity acts in a manner which is consistent with its purposes,
  - (b) act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person, and
  - (c) in circumstances capable of giving rise to a conflict of interest between the charity and any person responsible for the appointment of the charity trustee—
    - (i) put the interests of the charity before those of the other person, or
    - (ii) where any other duty prevents the charity trustee from doing so, disclose the conflicting interest to the charity and refrain from participating in any deliberation or decision of the other charity trustees with respect to the matter in question.
- (2) The charity trustees of a charity must ensure that the charity complies with any direction, requirement, notice or duty imposed on it by virtue of this Act.
- (3) Subsections (1) and (2) are without prejudice to any other duty imposed by enactment or otherwise on a charity trustee in relation to the exercise of functions in that capacity.
- (4) Any breach of the duty under subsection (1) or (2) is to be treated as being misconduct in the administration of the charity.
- (5) All charity trustees must take such steps as are reasonably practicable for the purposes of ensuring—
- (a) that any breach of a duty under subsection (1) or (2) is corrected by the trustee concerned and not repeated, and

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- (b) that any trustee who has been in serious or persistent breach of either or both of those duties is removed as a trustee.

### *Remuneration*

#### **67 Remuneration for services S**

- (1) A charity trustee may not be remunerated for services provided to the charity (including services provided in the capacity as a charity trustee or under a contract of employment) unless subsection (2) entitles the trustee to be so remunerated.
- (2) Where a charity trustee of a charity—
- (a) provides services to or on behalf of the charity, or
  - (b) might benefit from any remuneration for the provision of such services by a person with whom the trustee is connected,
- the person providing the services (the “service provider”) is entitled to be remunerated from the charity's funds for doing so only if the conditions set out in subsection (3) are met.
- (3) Those conditions are—
- (a) that the maximum amount of the remuneration—
    - (i) is set out in a written agreement between the service provider and the charity (or, as the case may be, its charity trustees) under which the service provider is to provide the services in question, and
    - (ii) is reasonable in the circumstances,
  - (b) that, before entering into the agreement, the charity trustees were satisfied that it would be in the interests of the charity for those services to be provided by the service provider for that maximum amount,
  - (c) that, immediately after entering into the agreement, less than half of the total number of charity trustees of the charity fall within subsection (4), and
  - (d) that the charity's constitution does not contain any provision which expressly prohibits the service provider from receiving the remuneration.
- (4) A charity trustee falls within this subsection if the trustee is—
- (a) party (in the capacity of a service provider) to a written agreement of the type described in subsection (3)(a)(i) under which any obligation is still to be fully discharged,
  - (b) entitled to receive remuneration from the charity's funds otherwise than by virtue of such an agreement, or
  - (c) connected with any other charity trustee who falls within sub-paragraph (a) or (b).
- (5) Nothing in subsections (1) or (2) prevents a charity trustee or other service provider from receiving any remuneration from a charity's funds which that service provider is entitled to receive by virtue of—
- (a) any authorising provision of the charity's constitution which was in force on 15 November 2004,
  - (b) an order made by the Court of Session, or
  - (c) any enactment.



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- (6) For the purposes of subsection (5)(a), an “authorising provision” is a provision which refers specifically to the payment of remuneration—
- (a) to the service provider concerned,
  - (b) where that service provider is a charity trustee, to a charity trustee, or
  - (c) where that service provider is connected to a charity trustee, to any person so connected.
- (7) Where a charity trustee or other service provider is remunerated in contravention of this section, the charity may recover the amount of remuneration; and proceedings for its recovery must be taken if OSCR so directs.

## 68 Remuneration: supplementary **S**

- (1) In section 67—
- “benefit” means any direct or indirect benefit,
- “maximum amount”, in relation to remuneration, means the maximum amount of the remuneration whether specified in or ascertainable under the terms of the agreement in question,
- “remuneration” includes any benefit in kind (and “remunerated” is to be construed accordingly),
- “services” includes goods that are supplied in connection with the provision of services.
- (2) For the purposes of that section, the following persons are “connected” with a charity trustee—
- (a) any person—
    - (i) to whom the trustee is married,
    - (ii) who is the civil partner of the trustee, or
    - (iii) with whom the trustee is living as husband and wife or, where the trustee and the other person are of the same sex, in an equivalent relationship,
  - (b) any child, parent, grandchild, grandparent, brother or sister of the trustee (and any spouse of any such person),
  - (c) any institution which is controlled (whether directly or through one or more nominees) by—
    - (i) the charity trustee,
    - (ii) any person with whom the charity trustee is connected by virtue of paragraph (a), (b), (d) or (e), or
    - (iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together,
  - (d) a body corporate in which—
    - (i) the charity trustee has a substantial interest,
    - (ii) any person with whom the charity trustee is connected by virtue of paragraph (a), (b), (c) or (e) has a substantial interest, or
    - (iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together, have a substantial interest,
  - (e) a Scottish partnership in which one or more of the partners is—
    - (i) the charity trustee, or

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(ii) a person with whom the charity trustee is, by virtue of paragraph (a) or (b), connected.

- (3) For the purposes of subsection (2) a person who is—
- (a) another person's stepchild, or
  - (b) brought up or treated by another person as if the person were a child of the other person,
- is to be treated as that other person's child.
- (4) Section 105 sets out when a person is to be treated as being in control of an institution or as having a substantial interest in a body corporate.

### *Disqualification*

## **69 Disqualification from being charity trustee S**

- (1) The persons specified in subsection (2) are disqualified from being charity trustees.
- (2) Those persons are any person who—
- (a) has been convicted of—
    - (i) an offence involving dishonesty,
    - (ii) an offence under this Act,
  - (b) is an undischarged bankrupt,
  - (c) has been removed, under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) or section 34 of this Act, from being concerned in the management or control of any body,
  - (d) has been removed from the office of charity trustee or trustee for a charity by an order made—
    - (i) by the Charity Commissioners for England and Wales under section 18(2)(i) of the Charities Act 1993 (c. 10), section 20(1A) (i) of the Charities Act 1960 (c. 58) or section 20(1) of that Act (as in force before the commencement of section 8 of the Charities Act 1992 (c. 41)), or
    - (ii) by Her Majesty's High Court of Justice in England, on the grounds of any misconduct in the administration of the charity for which the person was responsible or to which the person was privy, or which the person's conduct contributed to or facilitated,
  - (e) is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I.2002/3150).
- (3) A person referred to in subsection (2)(a) is not disqualified under subsection (1) if the conviction is spent by virtue of the Rehabilitation of Offenders Act 1974 (c. 53).
- (4) OSCR may, on the application of a person disqualified under subsection (1), waive the disqualification either generally or in relation to a particular charity or type of charity.
- (5) OSCR must notify a waiver under subsection (4) to the person concerned.
- (6) OSCR must not grant a waiver under subsection (4) if to do so would prejudice the operation of the Company Directors Disqualification Act 1986

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(c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I.2002/3150).

## 70 Disqualification: supplementary **S**

- (1) A person who acts as a charity trustee while disqualified by virtue of section 69 is guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a period not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both,
  - (b) on conviction on indictment, to imprisonment for a period not exceeding 2 years or a fine or both.
- (2) Any acts done as a charity trustee by a person disqualified by virtue of section 69 from being a charity trustee are not invalid by reason only of the disqualification.
- (3) In section 69(2)(b), “undischarged bankrupt” means a person—
  - (a) whose estate has been sequestrated, who has been adjudged bankrupt or who has granted a trust deed for or entered into an arrangement with creditors, and
  - (b) who has not been discharged under or by virtue of—
    - (i) section 54 or 75(4) of the Bankruptcy (Scotland) Act 1985 (c. 66),
    - (ii) an order under paragraph 11 of Schedule 4 to that Act,
    - (iii) section 279 or 280 of the Insolvency Act 1986 (c. 45), or
    - (iv) any other enactment or rule of law subsisting at the time of the person's discharge.

VALID FROM 24/02/2006

## CHAPTER 10 **S**

### DECISIONS: NOTICES, REVIEWS AND APPEALS

VALID FROM 01/04/2006

#### *Preliminary*

## 71 Decisions **S**

This Chapter applies to any decision by OSCR (or by a person to whom OSCR's functions are delegated by virtue of section 38) to—

- (a) refuse an application for entry in the Register, including entry as a SCIO under section 55, 58 or 60,
- (b) refuse to disapply section 3(3)(b) in relation to a charity,
- (c) give a direction under section 11(3),
- (d) give a direction under section 12(2) or (3),
- (e) refuse to give a direction under section 12(2),
- (f) refuse to consent to a charity taking any action set out in section 16(2),

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- (g) give a direction under section 28(3),
- (h) make a requirement under section 29(1),
- (i) remove a charity from the Register under section 30(1) or (3),
- (j) suspend a person under section 31(4),
- (k) give a direction under section 31(5) or (8),
- (l) give a direction under section 31(6), (7) or (9),
- (m) refuse an application made for the purposes of section 39(1),
- (n) give a direction under section 53(2),
- (o) give a direction under section 67(7),
- (p) refuse to grant a waiver under section 69(4),
- (q) refuse to designate a charity as a designated religious charity or designated national collector, or
- (r) withdraw the designation of a charity as a designated religious charity or designated national collector.

VALID FROM 01/04/2006

### *Notice and effect of decisions*

#### **72 Notice of decisions** **S**

- (1) Any person who makes a decision to which this Chapter applies must, as soon as reasonably practicable after doing so, give notice of it to the person specified in subsection (2) and, where the decision is made by a person to whom OSCR's functions have been delegated by virtue of section 38, OSCR.
- (2) That person is—
  - (a) in the case of a decision referred to in paragraph (a), (g), (j), (k), (n) or (p) of section 71, the person in respect of whom the decision was made,
  - (b) in the case of a decision referred to in paragraph (e) of that section, the charity which requested OSCR to conduct a review under section 12, and
  - (c) in the case of any other decision referred to in that section, the charity in respect of which the decision was made.
- (3) A notice given under this section must—
  - (a) set out the decision,
  - (b) give the reasons for the decision, and
  - (c) where the notice is given to a person specified in subsection (2), advise the recipient of—
    - (i) the right to request OSCR to review the decision, and
    - (ii) the period within which such a request must be made.

#### **73 Effect of decisions** **S**

- (1) Unless subsection (2) or (3) provides otherwise, a decision to which this Chapter applies (and any direction, requirement, suspension or other act in pursuance of such a decision) has effect from the day on which the notice required by section 72 is given.

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- (2) A decision referred to in section 71(d), (i), (o) or (r) (and any direction, requirement, suspension or other act in pursuance of such a decision) is of no effect unless and until the notice required by section 72 is given and—
- (a) the period within which OSCR must, on request, review the decision expires without a request being made, or
  - (b) where OSCR, on a request made within that period, confirms the decision (with or without variations)—
    - (i) the period within which that decision by OSCR may be appealed under section 76 to the Panel expires without an appeal being made, or
    - (ii) where such an appeal is made, it is abandoned or finally determined (by the Panel or, as the case may be, the Court of Session).
- (3) A decision referred to in section 71(h) (and any corresponding requirement) is of no effect unless and until the notice required by section 72 is given and—
- (a) the period within which OSCR must, on request, review the decision expires without a request being made, or
  - (b) where such a request is made, the date on which OSCR confirms the decision (with or without variations).

VALID FROM 01/04/2006

### Reviews

#### 74 Review of decisions **S**

- (1) OSCR must, within 21 days of being requested to do so by a person given notice under section 72 of a decision to which this Chapter applies—
  - (a) review the decision,
  - (b) confirm, vary, reverse or revoke it, and
  - (c) give notice of its decision under paragraph (b) to the person who requested the review.
- (2) A notice under paragraph (c) of subsection (1) must set out OSCR's reasons for its decision under paragraph (b) of that section.
- (3) The duty in subsection (1) applies only if the request is made within 21 days of the notice under section 72 being given to the person making the request.
- (4) OSCR must publish any further procedures in accordance with which reviews are to be conducted.

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## Appeals

### 75 Scottish Charity Appeals Panel **S**

- (1) The Scottish Ministers must, from time to time, constitute a panel to be known as the Scottish Charity Appeals Panel (in this Act referred to as “the Panel”) to exercise functions conferred on it by section 76.
- (2) Schedule 2 makes further provision about the Panel.

VALID FROM 01/04/2006

### 76 Appeals to Scottish Charity Appeals Panel **S**

- (1) Where OSCR—
  - (a) confirms a decision under section 74(1), or
  - (b) reconfirms a decision under section 77(1),
 the decision (or, where OSCR varies the decision on confirming or reconfirming it, the decision as varied) may be appealed to the Panel.
- (2) A decision referred to in paragraph (g) or (h) of section 71 (whether or not confirmed with variations) may not, despite subsection (1)(a), be appealed to the Panel.
- (3) It is for the person whose request or, as the case may be, earlier appeal under this section caused OSCR to confirm or reconfirm the decision to make an appeal under subsection (1).
- (4) Such an appeal must be made within 28 days of the person entitled to appeal it being given notice of the confirmation or reconfirmation.
- (5) The Panel may—
  - (a) confirm a decision appealed to it,
  - (b) quash such a decision and direct OSCR to take such other action, if any, as the Panel thinks fit by such time as may be specified in the direction, or
  - (c) remit such a decision back to OSCR, together with the Panel's reasons for doing so, for reconsideration.

VALID FROM 01/04/2006

### 77 Reconsideration of decision remitted to OSCR **S**

- (1) OSCR must, within 14 days of a decision being remitted to it under section 76(5) (c)—
  - (a) reconsider the decision,
  - (b) confirm, vary, reverse or revoke it, and
  - (c) give notice of its decision under paragraph (b) to the person who appealed its earlier decision to the Panel.

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(2) That notice must set out OSCR's reasons for its decision under subsection (1)(b).

VALID FROM 01/04/2006

## 78 Appeals to Court of Session **S**

- (1) Any decision of the Panel under section 76(5) may be appealed by—
- (a) the person who appealed to the Panel, or
  - (b) OSCR,
- to the Court of Session.
- (2) Any decision of OSCR (or by a person to whom OSCR's functions are delegated by virtue of section 38) to suspend a person by notice under section 31(4) may be appealed by the person suspended to the Court of Session.
- (3) The Court of Session may—
- (a) confirm the decision appealed to it, or
  - (b) quash the decision and direct OSCR (or the person to whom OSCR's functions are delegated by virtue of section 38, as the case may be) to take such action, if any, as the Court thinks fit by such time as may be specified in the direction.

VALID FROM 01/01/2006

## PART 2 **S**

### FUNDRAISING FOR BENEVOLENT BODIES

#### *Preliminary*

## 79 Interpretation of Part 2 **S**

- (1) In this Part—
- “benevolent body” means a body (including a charity) which is established for charitable, benevolent or philanthropic purposes,
- “benevolent contributions”, in relation to a representation made by a commercial participator or other person, means—
- (a) the whole or part of—
    - (i) the consideration given for goods or services sold or supplied by that person,
    - (ii) any proceeds (other than such consideration) of a promotional venture undertaken by that person,
  - (b) sums given by that person by way of donation in connection with the sale or supply of such goods or services,



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“commercial participator” means a person who—

- (a) carries on for profit a business other than a fundraising business, but
- (b) in the course of that business, engages in a promotional venture in the course of which it is represented that benevolent contributions are to be—
  - (i) given to or applied for the benefit of one or more particular benevolent bodies, or
  - (ii) applied for charitable, benevolent or philanthropic purposes,

“fundraising business” means a business carried on for profit and wholly or primarily engaged in soliciting or otherwise procuring money or promises of money for one or more particular benevolent bodies or for charitable, benevolent or philanthropic purposes,

“goods” includes all corporeal moveables except money,

“professional fundraiser” means—

- (a) a person (other than a benevolent body or a company connected with it) who carries on a fundraising business,
- (b) any other person who for reward solicits money or other property for the benefit of a benevolent body or for charitable, benevolent or philanthropic purposes otherwise than in the course of a fundraising venture undertaken by a person falling within paragraph (a),

“promises of money” includes standing orders, direct debits and similar instructions and authorisations for the payment of money,

“promotional venture” means an advertising or sales campaign or any other venture undertaken for promotional purposes,

“radio or television programme” includes any item included in a programme service within the meaning of the Broadcasting Act 1990 (c. 42),

“services” includes facilities, and in particular—

- (a) access to any premises or event,
- (b) membership of any organisation,
- (c) a ticket or other entitlement to participate in a lottery or game of chance,
- (d) the provision of advertising space, and
- (e) the provision of any financial facilities,

and references to the supply of services are to be construed accordingly.

- (2) In subsection (1), the definition of “commercial participator”, in relation to a benevolent body, does not include a company connected with the body.
- (3) The following persons are excluded from paragraph (b) of the definition of “professional fundraiser” in subsection (1)—
  - (a) a benevolent body or a company connected with it,
  - (b) a person concerned in the management or control, or an employee, of any such body or company,
  - (c) a person who in the course of a radio or television programme during which a fundraising venture is undertaken by a benevolent body, or by a company connected with it, makes any solicitation at the instance of the body or company,
  - (d) a commercial participator,
  - (e) a person who receives no more than—

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- (i) such sum as may be specified by regulations under section 83 by way of remuneration in connection with soliciting money or other property for the benefit of the benevolent body, or
  - (ii) such sum as may be so specified by way of remuneration in connection with any fundraising venture in the course of which the person solicits money or other property for the benefit of that body.
- (4) For the purposes of this Part a company is connected with a benevolent body if—
- (a) the body, or
  - (b) the body and one or more other benevolent bodies, when taken together,
- is or are entitled (whether directly or through one or more nominees) to exercise, or control the exercise of, the whole of the voting power at a general meeting of the company.

VALID FROM 24/04/2006

## 80 Representation and solicitation **S**

- (1) In this Part, references to representing and soliciting are to representing and soliciting in any manner, whether expressly or impliedly and however the representation or solicitation is communicated, and include representations and solicitations made—
- (a) orally (whether or not in the presence of the person being spoken to),
  - (b) in writing (whether or not by means of electronic communication), or
  - (c) by means of a statement published in any newspaper, film or radio or television programme.
- (2) In construing references to soliciting or otherwise procuring money or promises of money, it is immaterial whether any consideration by way of goods or services is, or is to be, given in return for the money or promises of money.
- (3) Where—
- (a) a solicitation of money or a promise of money for the benefit of a benevolent body is made in accordance with arrangements between a person and the body, and
  - (b) under those arrangements the person will be responsible for receiving on behalf of the body money or a promise of money given in response to the solicitation,
- then (if the person would not be so regarded apart from this subsection) that person is to be regarded for the purposes of this Part as soliciting money or promises of money for the benefit of the body.
- (4) Where a fundraising venture is undertaken by a professional fundraiser in the course of a radio or television programme, a solicitation which is made by a person in the course of the programme at the instance of the fundraiser is to be treated for the purposes of this Part as made by the fundraiser and not by the person (whether or not the solicitation is made by the person for any reward).

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## Control of fundraising

VALID FROM 24/04/2006

### 81 Prohibition on professional fundraising without formal agreement **S**

- (1) It is unlawful—
  - (a) for a professional fundraiser to solicit money or promises of money for the benefit of a benevolent body, or
  - (b) for a commercial participator to represent that benevolent contributions are to be given to, or applied for the benefit of, a benevolent body,except in accordance with an agreement between the professional fundraiser or commercial participator and the body which satisfies the prescribed requirements.
- (2) Where on the application of a benevolent body (whether or not a charity), or of OSCR in relation to a benevolent body which is a charity, the sheriff is satisfied—
  - (a) that a person has contravened or is contravening subsection (1) in relation to the body, and
  - (b) that the contravention is likely to continue or be repeated,the sheriff may grant an interdict.
- (3) Compliance with subsection (1) is enforceable only under subsection (2).
- (4) Subsections (5) and (6) apply where a benevolent body makes an agreement with a professional fundraiser or a commercial participator authorising—
  - (a) the professional fundraiser to solicit money or promises of money, or
  - (b) the commercial participator to represent that benevolent contributions are to be given to or applied,for the benefit of the body.
- (5) If the agreement does not satisfy the prescribed requirements, it is not enforceable against the benevolent body except to such extent (if any) as may be provided by an order of the sheriff.
- (6) The professional fundraiser or commercial participator is not entitled to receive remuneration or expenses in respect of anything done in pursuance of the agreement unless the agreement provides for such remuneration or expenses and—
  - (a) the agreement satisfies the prescribed requirements, or
  - (b) any such provision has effect by virtue of an order under subsection (5).
- (7) In this section “the prescribed requirements” means such requirements as are prescribed by regulations made under section 83.

VALID FROM 24/04/2006

### 82 Prevention of unauthorised fundraising **S**

- (1) Where on the application of a benevolent body, the sheriff is satisfied—
  - (a) that the body has complied with subsection (3),

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- (b) that any person is or has been—
    - (i) soliciting money or promises of money for the benefit of the body, or
    - (ii) representing that benevolent contributions are to be given to or applied for the benefit of the body,
  - (c) that the person is likely to continue to do so or do so again, and
  - (d) as to one or more of the matters specified in subsection (2),
- the sheriff may grant an interdict.
- (2) Those matters are—
- (a) that the person in question is using methods of fundraising to which the body objects,
  - (b) that that person is not a fit and proper person to raise funds for the body,
  - (c) where the conduct complained of is the making of such representations as are mentioned in subsection (1)(b)(ii), that the body does not wish to be associated with the particular promotional or other fundraising venture in which that person is engaged.
- (3) Not less than 28 days before making an application under subsection (1) the benevolent body must serve on the person in question a notice—
- (a) requesting the person immediately to cease—
    - (i) soliciting money or promises of money for the benefit of the body, or
    - (ii) representing that benevolent contributions are to be given to or applied for the benefit of the body,
 as the case may be, and
  - (b) stating that, if the person does not comply with the notice, the body will apply for an interdict under this section.
- (4) Where a person to whom a benevolent body gives such a notice—
- (a) complies with the notice, but
  - (b) subsequently begins to carry on activities which are the same, or substantially the same, as those in respect of which the notice was given,
- the body need not, for the purposes of an application under subsection (1) made by it, serve a further notice on the person in respect of any such activities carried on within 12 months of giving the notice.
- (5) No application may be made under subsection (1) by a benevolent body in respect of anything done by a professional fundraiser or commercial participator in relation to the body.

### 83 Regulations about fundraising **S**

- (1) The Scottish Ministers may, after consulting such persons as they think fit, make regulations—
- (a) about the solicitation by professional fundraisers of money or promises of money for the benefit of benevolent bodies or for charitable, benevolent or philanthropic purposes,
  - (b) about representations made by commercial participators in relation to benevolent contributions,

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- (c) generally for or in connection with regulating benevolent fundraising by benevolent fundraisers.
- (2) Such regulations may, in particular, make provision—
- (a) specifying sums for the purposes of section 79(3)(e),
  - (b) about the form and content of—
    - (i) agreements for the purposes of section 81,
    - (ii) notices under section 82(3),
  - (c) about the information and identification to be provided by professional fundraisers or commercial participators in soliciting money or promises of money or making representations in relation to benevolent contributions,
  - (d) about the information and identification to be provided by benevolent fundraisers in carrying on benevolent fundraising,
  - (e) about circumstances in which payments or agreements made in response to—
    - (i) solicitations or representations of the type described in paragraph (c), or
    - (ii) benevolent fundraising,may be refunded or, as the case may be, cancelled,
  - (f) requiring professional fundraisers or commercial participators to make available to benevolent bodies with whom they have agreements for the purposes of section 81 books, documents or other records (however kept) which relate to the bodies,
  - (g) about the manner in which money or promises of money acquired by professional fundraisers or commercial participators for the benefit of, or otherwise falling to be given to or applied by them for the benefit of, benevolent bodies is or are to be transmitted to the bodies,
  - (h) requiring benevolent fundraisers, in carrying on benevolent fundraising, to take all reasonable steps to ensure that it is carried on in such a way that it does not—
    - (i) unreasonably intrude on the privacy of those from whom funds are being solicited or procured,
    - (ii) involve the making of unreasonably persistent approaches to persons to donate funds,
    - (iii) result in undue pressure being placed on persons to donate funds,
    - (iv) involve the making of any false or misleading representation about any of the matters mentioned in subsection (3).
- (3) Those matters are—
- (a) the extent or urgency of any need for funds on the part of any benevolent body or company connected with such a body,
  - (b) any use to which funds donated in response to the fundraising are to be put by such a body or company, and
  - (c) the activities, achievements or finances of such a body or company.
- (4) In subsection (2)(g) the reference to money or promises of money includes a reference to money or promises of money which, in the case of a professional fundraiser or commercial participator—
- (a) has or have been acquired by the fundraiser or commercial participator otherwise than in accordance with an agreement with a benevolent body, but

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- (b) by reason of any solicitation or representation in consequence of which it has or they have been acquired, is or are held by the fundraiser or commercial participator on trust for such a body.
- (5) Regulations under this section may provide that a person who, without reasonable excuse, fails to comply with a specified requirement of the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) In this section—
- “benevolent fundraising” means soliciting or otherwise procuring money or promises of money for—
    - (a) the benefit of benevolent bodies or companies connected with them, or
    - (b) charitable, benevolent or philanthropic purposes,
  - “benevolent fundraisers” are—
    - (a) benevolent bodies and companies connected with them,
    - (b) persons concerned in the management or control of such bodies or companies,
    - (c) employees or agents of—
      - (i) such bodies or companies,
      - (ii) persons concerned in the management or control of such bodies or companies, and
    - (d) volunteers acting for or on behalf of such bodies or companies.

#### *Public benevolent collections*

PROSPECTIVE

### **84 Meaning of “public benevolent collection” S**

- (1) This section applies for the interpretation of sections 85 to 92.
- (2) “Public benevolent collection” means a collection from the public of money or promises of money (whether or not given by them for a consideration by way of goods or services) for the benefit of benevolent bodies or for charitable, benevolent or philanthropic purposes taken—
- (a) in a public place, or
  - (b) by means of visits to two or more houses or business premises.
- (3) “Public place”, in relation to a public benevolent collection, means—
- (a) any road (within the meaning of the Roads (Scotland) Act 1984 (c. 54)), and
  - (b) any other place to which, at any time when the collection is taken, members of the public have access as of right or by virtue of express or implied permission and which—
    - (i) is not within a building, or
    - (ii) if within a building, is a public area within any station, airport or shopping precinct or is any other similar public area.
- (4) But subsection (3)(b) does not apply to any place to which members of the public have access—



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- (a) only on payment or by ticket,
- (b) only by virtue of permission given for the purpose of the collection in question.

(5) In relation to a public benevolent collection—

“business premises” means any premises used for business or other commercial purposes,

“house” includes any part of a building constituting a separate dwelling.

PROSPECTIVE

## 85 Regulation of public benevolent collections **S**

- (1) Where a public benevolent collection is held in the area of a local authority without the consent of the authority under section 86, the organiser of the collection is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (2) Subsection (1) does not apply to a collection—
  - (a) by a designated national collector,
  - (b) which takes place in the course of a public meeting,
  - (c) which—
    - (i) takes place on land to which members of the public have access only by virtue of the express or implied permission of the occupier of the land or by virtue of any enactment, and
    - (ii) is organised by the occupier of the land, or
  - (d) which takes place by means of an unattended receptacle in a public place.
- (3) In subsection (2), “occupier” means, in relation to unoccupied land, the person entitled to occupy it.

## 86 Local authority consents **S**

- (1) An application for the consent of a local authority to the holding of a public benevolent collection must be made to the authority, in such form as the authority may determine, by the organiser of the collection—
  - (a) no earlier than 18 months, and
  - (b) no later than 2 months (or such shorter period as the organiser and the authority may agree),
 before the proposed date of the collection.
- (2) Before determining such an application, the local authority must consult the chief constable of the police force for the area and may make other inquiries.
- (3) On such an application the local authority may—
  - (a) grant its consent (whether or not subject to conditions), or
  - (b) refuse its consent on any of the grounds set out in subsection (6).



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- (4) Where the application has been made not later than 2 months before the proposed date of the collection, the local authority must give the organiser notice of its decision on the application not later than 14 days before that date.
- (5) The conditions which may be imposed in pursuance of subsection (3)(a) are such conditions as the local authority thinks fit having regard to the local circumstances in which the collection is to be held, including conditions—
  - (a) specifying the date, time or frequency of the collection,
  - (b) specifying where it may take place,
  - (c) regulating its conduct,
  - (d) as to the use by collectors of any badges or certificates of authority which regulations made under section 83(1) require to be provided,
  - (e) specifying the form of collection boxes, other containers and any other articles which may be used for the purposes of the collection,
  - (f) as to any other matter relating to the local circumstances of the collection.
- (6) The grounds of refusal referred to in subsection (3)(b) are—
  - (a) that the date, time or frequency of the collection, or that holding it at the proposed place, would cause undue public inconvenience,
  - (b) that another collection in respect of which consent under this section has been given by the authority or which is organised by a designated national collector is due to take place in the area of the authority on the same day or the day before or after that day,
  - (c) that it appears to the local authority that the amount likely to be applied for the benefit of benevolent bodies or for charitable, benevolent or philanthropic purposes in consequence of the collection is inadequate having regard to the likely amount of the proceeds of the collection,
  - (d) where the local authority has requested the organiser of the collection to provide it with any supplementary information which it considers necessary for the purposes of determining the application, that the organiser has failed to comply with the request, and
  - (e) that the organiser of the collection has been convicted of—
    - (i) an offence under section 85(1), 90(3) or 91(3) of this Act, or
    - (ii) any other offence which involves dishonesty or the commission of which would be likely to be facilitated by the grant of consent under this section.
- (7) Where a local authority has reason to believe that, since its consent was granted under this section, there has been a change in circumstances such that one or more of the grounds of refusal set out in subsection (6) applies in relation to the public benevolent collection, the authority may, not later than the day before the date of the collection—
  - (a) withdraw the consent, or
  - (b) vary the consent by making it subject to conditions or further conditions or varying any condition to which it is subject.
- (8) Where a local authority has reason to believe that there has been, or is likely to be, a breach of any condition imposed on a consent under this section, it may, not later than the day before the date of the collection, withdraw the consent.
- (9) A local authority must give the organiser of a public benevolent collection notice of a decision under this section—

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(a) to grant consent subject to conditions,

(b) to refuse consent,

(c) to withdraw or vary a consent,

including the reasons for the authority's decision and information about the organiser's right of appeal under section 88.

- (10) The Scottish Ministers may, by regulations, disapply the duty to consult under subsection (2) in relation to applications of such type as they may describe in the regulations.

PROSPECTIVE

## 87 Designated national collectors **S**

- (1) OSCR may specify criteria to be satisfied for the purposes of—

(a) obtaining, and

(b) retaining,

designation as a designated national collector under this section.

- (2) Before specifying such criteria, OSCR must consult—

(a) such associations representing local authorities,

(b) such persons representing the interests of charities, and

(c) such other persons,

as it thinks fit.

- (3) OSCR must publish any criteria specified under subsection (1).

- (4) OSCR may designate as a designated national collector a charity which appears to it to satisfy such criteria as are for the time being specified under subsection (1)(a).

- (5) OSCR may withdraw a designation under subsection (4) from a charity which appears to it not to satisfy such criteria as are for the time being specified under subsection (1)(b).

- (6) Regulations under section 90 may make provision about the effect of the withdrawal of a designation in relation to public benevolent collections notice of which was, prior to the withdrawal, given under subsection (7).

- (7) A designated national collector which proposes to hold a public benevolent collection in the area of a local authority must—

(a) no earlier than 18 months, and

(b) no later than 3 months,

before the proposed date of the collection, notify the authority of the proposal.

- (8) The local authority may prohibit the public benevolent collection if it considers that the public benevolent collection would be likely to cause undue public inconvenience (by reason of it being held on the same date and at the same time and place as any other public benevolent collection or for any other reason).

- (9) A decision under subsection (8) must be made not later than one month after the date of the notification under subsection (7).

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- (10) A local authority must give the designated national collector notice of a decision under subsection (8) including the reasons for the authority's decision and information about the designated national collector's rights of appeal under section 88.

PROSPECTIVE

## 88 Appeals **S**

- (1) The organiser of a public benevolent collection may, by summary application, appeal to the sheriff against a decision of a local authority under section 86—
  - (a) granting consent subject to conditions,
  - (b) refusing consent, or
  - (c) withdrawing or varying a consent.
- (2) But no appeal is competent under subsection (1) against the decision of the local authority so far as the decision, or the reasons for it, relate to the date of the proposed collection.
- (3) A designated national collector may, by summary application, appeal to the sheriff against a decision of a local authority under section 87(8).
- (4) An appeal under this section must be lodged within 14 days of the date of receipt of the notice under section 86(9) or, as the case may be, 87(10).
- (5) In upholding an appeal under this section the sheriff may quash the decision of the local authority and remit the case, together with reasons for the sheriff's decision, to the authority for further consideration.

PROSPECTIVE

## 89 Application of funds **S**

- (1) This section applies where the court, on an application by OSCR, is satisfied that sums collected in a public benevolent collection by or on behalf of any person other than a charity cannot for any reason be applied for the purposes for which they were collected.
- (2) The court may—
  - (a) order any person holding such sums not to part with them without the court's consent,
  - (b) approve a scheme prepared by OSCR for the transfer of those sums to a charity specified in the scheme.
- (3) The court may approve a scheme under subsection (2)(b) subject to modifications.
- (4) In this section, “the court” means the sheriff.

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## 90 Regulations relating to public benevolent collections **S**

- (1) The Scottish Ministers may, by regulations, make further provision for the purpose of regulating public benevolent collections.
- (2) Such regulations may, in particular, include provision—
  - (a) about keeping and publishing accounts,
  - (b) for preventing public inconvenience,
  - (c) specifying particular provisions of the regulations breach of which is an offence under subsection (3).
- (3) Any person who contravenes a provision of such regulations breach of which is stated in the regulations to be an offence is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## 91 Collection of goods **S**

- (1) The Scottish Ministers may, by regulations, make provision about the collection from the public of goods for the benefit of benevolent bodies or for charitable, benevolent or philanthropic purposes.
- (2) Those regulations may, in particular, include provision—
  - (a) requiring the organiser of such a collection to notify the local authority for the area in which it is proposed that the collection be carried out,
  - (b) allowing or requiring the local authority, in such circumstances as may be specified in the regulations, to prohibit the carrying out of such a collection,
  - (c) about the dates, times and places at which, and the frequency with which, such collections may be carried out,
  - (d) about keeping and publishing reports on those collections,
  - (e) for preventing public inconvenience,
  - (f) specifying particular provisions of the regulations breach of which is to be an offence under subsection (3).
- (3) Any person who contravenes a provision of such regulations breach of which is stated in the regulations to be an offence is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PROSPECTIVE

## 92 Guidance on collections **S**

Local authorities must have regard to any guidance issued by OSCR about the exercise of their functions in relation to—

- (a) public benevolent collections, or
- (b) collections from the public of goods for the benefit of benevolent bodies or for charitable, benevolent or philanthropic purposes.

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VALID FROM 01/01/2006

## PART 3 **S**

### INVESTMENT POWERS OF TRUSTEES

#### 93 **Extension of general powers of trustees **S****

(1) Section 4 (general powers of trustees) of the Trusts (Scotland) Act 1921 (c. 58) is amended as follows.

(2) In subsection (1)—

(a) after paragraph (e) insert—

“(ea) To make any kind of investment of the trust estate (including an investment in heritable property).

(eb) To acquire heritable property for any other reason.”,

(b) paragraph (ee) is repealed.

(3) After subsection (1) insert—

“(1A) The power to act under subsection (1)(ea) or (eb) above is subject to any restriction or exclusion imposed by or under any enactment.

(1B) The power to act under subsection (1)(ea) or (eb) above is not conferred on any trustees who are—

(a) the trustees of a pension scheme,

(b) the trustees of an authorised unit trust, or

(c) trustees under any other trust who are entitled by or under any other enactment to make investments of the trust estate.

(1C) No term relating to the powers of a trustee contained in a trust deed executed before 3rd August 1961 is to be treated as restricting or excluding the power to act under subsection (1)(ea) above.

(1D) No term restricting the powers of investment of a trustee to those conferred by the Trustee Investments Act 1961 (c. 62) contained in a trust deed executed on or after 3rd August 1961 is to be treated as restricting or excluding the power to act under subsection (1)(ea) above.

(1E) The reference in subsection (1D) above to a trustee does not include a reference to a trustee under a trust constituted by a private or local Act of Parliament or a private Act of the Scottish Parliament; and “trust deed” shall be construed accordingly.

(1F) In this section—

“authorised unit trust” means a unit trust scheme in the case of which an order under section 243 of the Financial Services and Markets Act 2000 (c. 8) is in force,

“enactment” has the same meaning as in the Scotland Act 1998 (c. 46),

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“pension scheme” means an occupational pension scheme (within the meaning of the Pension Schemes Act 1993 (c. 48)) established under a trust and subject to the law of Scotland.”

## 94 Exercise of power of investment **S**

After section 4 of the Trusts (Scotland) Act 1921 (c. 58) insert—

### “4A Exercise of power of investment: duties of trustee

- (1) Before exercising the power of investment under section 4(1)(ea) of this Act, a trustee shall have regard to—
  - (a) the suitability to the trust of the proposed investment, and
  - (b) the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust.
- (2) Before exercising that power of investment, a trustee shall (except where subsection (4) applies) obtain and consider proper advice about the way in which the power should be exercised.
- (3) When reviewing the investments of the trust, a trustee shall (except where subsection (4) applies) obtain and consider proper advice about whether the investments should be varied.
- (4) If a trustee reasonably concludes that in all the circumstances it is unnecessary or inappropriate to obtain such advice, the trustee need not obtain it.
- (5) In this section, “proper advice” means the advice of a person who is reasonably believed by the trustee to be qualified by the person's ability and practical experience of financial and other matters relating to the proposed investment.

### 4B Exercise of power of investment: power to appoint nominees

- (1) The trustees of a trust may, for the purpose of exercising the power of investment under section 4(1)(ea) of this Act—
  - (a) appoint a person to act as their nominee in relation to such of the trust estate, heritable as well as moveable, as they may determine, and
  - (b) take such steps as are necessary to secure the transfer of title to that property to their nominee.
- (2) A person may not be appointed as a nominee unless the trustees reasonably believe—
  - (a) that the appointment is appropriate in the circumstances of the trust, and
  - (b) that the proposed nominee has the skills, knowledge and expertise that it is reasonable to expect of a person acting as a nominee.
- (3) The power to appoint a nominee is subject to any restriction or exclusion imposed by or under—

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- (a) the trust deed, or
  - (b) any enactment (within the meaning of the Scotland Act 1998 (c. 46)).
- (4) An appointment as a nominee shall—
- (a) be made in writing,
  - (b) be subject to the trustees' retaining power to—
    - (i) direct the nominee, and
    - (ii) revoke the nominee's appointment, and
  - (c) subject to subsection (4), otherwise be on such terms as to suitable remuneration and other matters as the trustees may determine.
- (5) The trustees may not appoint a nominee on any of the following terms unless it is reasonably necessary for them to do so—
- (a) a term permitting the nominee to appoint a substitute,
  - (b) a term restricting the liability of the nominee, or of any substitute, to the trustees or to any beneficiary,
  - (c) a term permitting the nominee, or any substitute, to act in circumstances capable of giving rise to a conflict of interest.
- (6) While a nominee continues to act for the trust, the trustees shall—
- (a) keep under review the arrangements under which the nominee acts and how those arrangements are being put into effect,
  - (b) if circumstances make it appropriate to do so, consider whether there is a need to exercise their power—
    - (i) to direct the nominee, or
    - (ii) to revoke the nominee's appointment, and
  - (c) exercise either or both of those powers if they consider that there is a need to do so.

#### **4C Declaration of power to delegate investment management functions**

- (1) It is declared that the trustees of a trust have and have always had the power, subject to any restriction or exclusion imposed by or under the trust deed or any enactment, to authorise an agent to exercise any of their investment management functions at the agent's discretion or in such other manner as the trustees may direct.
- (2) In this section—
- “enactment” has the same meaning as in the Scotland Act 1998 (c. 46), and
  - “investment management functions” means functions relating to the management of investments of the trust estate, heritable as well as moveable.”

## **95 Amendments consequential on Part 3 S**

Schedule 3 makes amendments consequential on sections 93 and 94.



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## PART 4 **S**

### GENERAL AND SUPPLEMENTARY

VALID FROM 27/02/2007

#### 96 **Power of charity to participate in certain financial schemes **S****

- (1) Every charity has power to participate in common investment schemes and common deposit schemes.
- (2) Subsection (1) does not apply where a charity's constitution excludes such participation by referring specifically to common investment schemes or, as the case may be, common deposit schemes.
- (3) In this section, “common investment scheme” and “common deposit scheme” have the meanings given to those expressions in sections 24 and 25 of the Charities Act 1993 (c. 10).

VALID FROM 01/01/2006

#### 97 **Financial assistance for benevolent bodies **S****

- (1) The Scottish Ministers may make such payments as they think fit to—
  - (a) any benevolent body, in connection with its activities,
  - (b) any person, in connection with anything done by that person with a view to enabling one or more benevolent bodies, benevolent bodies of a particular type or benevolent bodies generally to implement their purposes to better effect.
- (2) Such payments may include payments in relation to the costs of establishing, dissolving or winding up a benevolent body.
- (3) A payment under subsection (1) may be made by way of grant, loan or otherwise.
- (4) A payment under subsection (1) may be made subject to conditions, including conditions requiring repayment in specified circumstances.
- (5) No payment may be made under subsection (1) to a local authority or any other public body or office-holder.
- (6) The power to make a payment under subsection (1) may be exercised whether or not there is power to make the payment under any other enactment.

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VALID FROM 01/04/2006

## 98 Rate relief for registered community amateur sports clubs **S**

- (1) Section 4 (reduction and remission of rates payable by charitable and other organisations) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962 (c. 9) is amended as follows.
- (2) In subsection (2)—
  - (a) for the word “or” which follows paragraph (a) substitute—
    - “(aa) are occupied by a registered community amateur sports club and are wholly or mainly used for the purposes of that club (or for the purposes of that and of other clubs which are, or are entitled to be registered as, such clubs);”
  - (b) for “either paragraph (a) or paragraph (b)” substitute “any of paragraphs (a), (aa) and (b)”.
- (3) In subsection (5), for “paragraph (a), (b) or (c)” substitute “any of paragraphs (a) to (c)”.
- (4) In subsection (10), after paragraph (b) insert—
  - “(c) “registered community amateur sports club” means a registered club for the purposes of Schedule 18 to the Finance Act 2002 (c. 23); and the period during which a club is a registered club for those purposes is to be taken to begin with the date on which its registration takes effect and end on the date with effect from which its registration is terminated (whether or not it is registered, or its registration is terminated, with retrospective effect).”
- (5) After subsection (12) insert—
  - “(13) The amendments to this section made by section 98 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) (which extend mandatory relief to, and allow discretionary relief to be given to, registered community amateur sports clubs) have effect only as respects the year 2006–7 and subsequent years.”

VALID FROM 24/02/2006

## 99 Population of Register etc. **S**

- (1) OSCR must enter in the Register each body which was, immediately prior to the commencement of paragraph 7(a)(ii) of Schedule 4 to this Act, entitled by virtue of section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) to describe itself as a “Scottish charity”.
- (2) Subsection (1) does not affect OSCR's power to remove a charity from the Register under section 30.
- (3) The Scottish Ministers may by order—

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- (a) disapply section 3(3) in so far as it would otherwise apply to any body entered in the Register under subsection (1) for such period ending no later than 18 months after the commencement of this section as may be specified in the order,
  - (b) provide—
    - (i) that any unregistered charitable body (or any such body of a particular type) may, despite any contrary provision in this Act, refer to itself as a “charity” for such period ending no later than 12 months after the commencement of this section as may be so specified, and
    - (ii) that any provision of this Act or of any other enactment is to apply (with such modifications, if any, as may be so specified) to any such body as if it were entered in the Register for so long as it refers to itself as a “charity”.
- (4) In subsection (3), “unregistered charitable body” means a body which—
- (a) is established under the law of a country or territory other than Scotland,
  - (b) is entitled to refer to itself as a “charity” (by any means or in any language) in that country or territory, and
  - (c) does not require to be entered in the Register under subsection (1).

VALID FROM 24/04/2006

## 100 Notices, applications etc. **S**

- (1) In this section, “formal communication” means—
- (a) any notice, notification, direction or consent given, or
  - (b) any request for review, proposal, application (other than an application to a court), report or decision made,
- under or for the purposes of this Act.
- (2) A formal communication must be made in writing.
- (3) A formal communication which is sent by electronic means is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.
- (4) A formal communication is given to or made to a person if it is—
- (a) delivered to the person,
  - (b) sent by post in a prepaid registered letter, or by the recorded delivery service, addressed—
    - (i) where the person is a charity, to the charity at the principal office set out in its entry in the Register or to the charity trustee whose name is so set out at the address so set out,
    - (ii) where the person is an incorporated company or body (other than a charity), to the secretary, chief clerk or chief executive of the company or body at its registered or principal office,
    - (iii) where the person is a public office-holder, to the office-holder at the office-holder's principal office,
    - (iv) in any other case, to the person at that person's usual or last known place of abode, or

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- (c) sent to the person in some other manner (including by electronic means) which the sender considers likely to cause it to be delivered on the same or next day.
- (5) Where a charity's entry in the Register does not, because of subsection (4) of section 3, include the information specified in subsection (3)(b) of that section, a formal communication may also be given to or made to the charity if it is sent by post in a prepaid registered letter, or by the recorded delivery service, addressed—
- (a) to the charity care of OSCR, or
  - (b) where OSCR is the sender—
    - (i) to the charity at its principal office, or
    - (ii) to the charity trustee whose name is, because of section 3(4), excluded from the Register at the address which is so excluded.
- (6) A formal communication sent under subsection (4)(c) is, unless the contrary is proved, to be deemed to be delivered on the next working day which follows the day on which it is sent.
- (7) In subsection (6), “working day” means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971 (c. 80), is a bank holiday in Scotland.

VALID FROM 24/04/2006

## 101 Offences by bodies corporate etc. **S**

- (1) Where an offence under this Act committed—
- (a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is a director, manager or secretary of the body corporate, or
    - (ii) purports to act in any such capacity,
  - (b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is a partner, or
    - (ii) purports to act in that capacity,
  - (c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is concerned in the management or control of the association, or
    - (ii) purports to act in the capacity of a person so concerned,
 the individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

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## 102 Ancillary provision **S**

The Scottish Ministers may by order—

- (a) modify any enactment for the purposes of preventing a body established by enactment from failing the charity test by reason of either or both of paragraphs (a) and (b) of section 7(4),
- (b) make such other incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

## 103 Orders, regulations and rules **S**

- (1) Any power of the Scottish Ministers under this Act to make orders, regulations or rules is exercisable by statutory instrument.
- (2) Any such power includes power to make—
  - (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (b) different provision for different purposes.
- (3) An order under section 102 may modify any enactment, instrument or document.
- (4) A statutory instrument containing an order, regulations or rules under this Act except—
  - (a) an order under section 7(5),
  - (b) an order under section 19(8),
  - (c) regulations under section 64(d),
  - (d) regulations under section 83(1) containing provisions of the type described in section 83(2)(h),
  - (e) where subsection (5) applies, an order under section 102,
  - (f) an order under section 107(2),is subject to annulment in pursuance of a resolution of the Scottish Parliament.

- (5) No—
  - (a) order under section 7(5),
  - (b) order under section 19(8),
  - (c) regulations made by virtue of section 64(d),
  - (d) regulations under section 83(1) containing provisions of the type described in section 83(2)(h), or
  - (e) order under section 102 containing provisions which add to, replace or omit any part of the text of an Act,

may be made unless a draft of the statutory instrument containing the regulations or, as the case may be, order has been laid before, and approved by resolution of, the Parliament.

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VALID FROM 01/04/2006

#### 104 Minor and consequential amendments and repeals **S**

Schedule 4 sets out minor amendments and amendments and repeals consequential on the provisions of this Act.

VALID FROM 01/04/2006

#### 105 Meaning of “control” etc. **S**

- (1) A charity which is able (whether directly or through one or more nominees) to secure that the affairs of a body are conducted in accordance with the charity's wishes is, for the purposes of sections 28 to 35, to be treated as being in control of that body.
- (2) For the purposes of sections 46(5) and 68(2)—
  - (a) a person who is able to secure that the affairs of an institution are conducted in accordance with the person's wishes is to be treated as being in control of the institution,
  - (b) a person who—
    - (i) is interested in shares comprised in the equity share capital of a body corporate of a nominal value of more than one-fifth of that share capital, or
    - (ii) is entitled (whether directly or through one or more nominees) to exercise, or control the exercise of, more than one-fifth of the voting power at any general meeting of a body corporate,
 is to be treated as having a substantial interest in the body corporate.
- (3) The rules set out in Part 1 of Schedule 13 to the Companies Act 1985 (c. 6) apply for the purposes of subsection (2) as they apply for the purposes of section 346(4) (connected persons etc.) of that Act (and “equity share capital” and “share” have the same meanings in subsection (2) as they have in that Act).

VALID FROM 01/01/2006

#### 106 General interpretation **S**

In this Act, unless the context otherwise requires—

- “applicant” has the meaning given in section 4(a),
- “benevolent body” has the meaning given in section 79,
- “charitable purposes” means the purposes set out in section 7(2),
- “charity” means a body entered in the Register,
- “charity test” is to be construed in accordance with section 7,
- “charity trustees” means the persons having the general control and management of the administration of a charity,

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“company” means a company formed and registered under the Companies Act 1985 (c. 6) or to which that Act applies as it applies to such a company,

“constitution”—

- (a) in relation to a charity or other body established under the Companies Acts, means its memorandum and articles of association,
- (b) in relation to a charity or other body which is a body of trustees, means the trust deed,
- (c) in relation to a SCIO, has the meaning given in section 50,
- (d) in relation to a charity or other body established by enactment, means the enactment which establishes it and states its purposes,
- (e) in relation to charity or other body established by a Royal charter or warrant, means the Royal charter or warrant, and
- (f) in the case of any other charity or body, means the instrument which establishes it and states its purposes,

“designated national collector” means a charity designated as such under section 87(4),

“designated religious charity” means a charity designated as such under section 65(1),

“equal opportunities” and “equal opportunity requirements” have the meaning given in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46),

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),

“misconduct” includes mismanagement,

“OSCR” means the holder of the Office of the Scottish Charity Regulator,

“the Panel” mean a Scottish Charity Appeals Panel constituted in accordance with section 75(1) of this Act,

“the Register” means the Scottish Charity Register,

“relevant financial institution” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to accept deposits,
- (b) 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(1) of that Schedule) to accept deposits,

and this definition must be read with section 22 of and Schedule 2 to that Act and any relevant order under that section,

“reorganisation scheme” has the meaning given in section 42(3) and references to “approved reorganisation schemes” are references to schemes approved under section 39 or 40,

“SCIO” has the meaning given in section 49.

## 107 Short title and commencement **S**

- (1) This Act may be cited as the Charities and Trustee Investment (Scotland) Act 2005.
- (2) This Act (except sections 102 and 103 and this section) comes into force on such day as the Scottish Ministers may by order appoint.



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VALID FROM 01/01/2006

## SCHEDULE 1 **S**

(introduced by section 1)

### THE SCOTTISH CHARITY REGULATOR

.....

## SCHEDULE 2 **S**

(introduced by section 75)

### SCOTTISH CHARITY APPEALS PANEL

.....

## SCHEDULE 3 **S**

(introduced by section 95)

### POWERS OF TRUSTEES: CONSEQUENTIAL AMENDMENTS

#### *Judicial Factors Act 1849 (c. 51)*

- 1 In section 5 (judicial factor's duty to lodge in bank money held by factor etc.) of the Judicial Factors Act 1849, subsection (4) is repealed.

#### *Trusts (Scotland) Act 1921 (c. 58)*

- 2 In the Trusts (Scotland) Act 1921, sections 12 and 14 are repealed.

#### *Trusts (Scotland) Act 1961 (c. 57)*

- 3 In section 2(1) (validity of certain transactions by trustees etc.) of the Trusts (Scotland) Act 1961—
- (a) for “(ee)” substitute “(eb)”,
  - (b) in the proviso, after “transaction” where it first occurs insert “(other than a transaction such as is specified in paragraph (ea) of that subsection)”.

#### *Trustee Investments Act 1961 (c. 62)*

- 4 (1) The Trustee Investments Act 1961 is amended as follows.
- (2) Sections 1, 2, 5, 6, 12, 13 and 15 are repealed except in so far as they are applied by or under any other enactment.
  - (3) Section 3 and Schedules 2 and 3 are repealed, except in so far as they relate to a trustee having a power of investment conferred under an enactment—
    - (a) which was passed before the passing of the Trustee Investments Act 1961, and

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(b) which is not amended by this schedule.

(4) Section 8 and paragraph 1(2) of Schedule 4 are repealed.

*National Health Service (Scotland) Act 1978 (c. 29)*

5 In Schedule 7 (the Research Trust) to the National Health Service (Scotland) Act 1978, paragraph 4 is repealed.

*Education (Scotland) Act 1980 (c. 44)*

6 In section 105 (schemes for reorganisation of educational endowments) of the Education (Scotland) Act 1980, subsection (4D) is repealed.

*Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73)*

7 Section 54 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 is repealed.

*Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)*

8 In Schedule 8 (amendments of enactments) to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, in paragraph 21, sub-paragraph (1)(b) and the preceding “and” are repealed.

*Charities Act 1993 (c. 10)*

9 In the Charities Act 1993, the following provisions are repealed—  
sections 70 and 71,  
in section 86(2), the word “70” in paragraph (a), and paragraph (b),  
section 100(5).

VALID FROM 01/04/2006

SCHEDULE 4 **S**  
(introduced by section 104)

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

.....

**Status:**

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