

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 1: Charities

Chapter 9 – Charity trustees

Charity trustees: general duties

79. The term “charity trustees” (which is defined in [section 106](#)) is used throughout the Act to describe those persons having general control and management of the administration of a charity. Depending on the form of the body, this term will generally refer to the directors, the members who form a management committee or group, the trustees of a trust, or if it is an unincorporated association, the persons who normally direct the managers of the body. The term is merely used as a generic term within this Act and does not change other legislation. Hence the directors of a charitable company remain directors but take on duties as “charity trustees” under this Act.
80. [Section 66](#) sets out the general duty of care that charity trustees must follow. These are a codification of existing law and practice. [Subsection \(1\)](#) requires a charity trustee to act in the interests of the charity. In particular they have to seek to ensure that the charity acts consistently with its purposes and that they act with a level of care and diligence that is reasonably expected of someone managing another’s affairs. [Subsection \(1\) \(c\)](#) requires a charity trustee to avoid a conflict of interest which may arise between the charity and any person responsible for their appointment as a charity trustee. If such circumstances arise, the charity trustee must put the interests of the charity before those of the person responsible for their appointment. Where another duty prevents them from doing that, the charity trustee must disclose the conflicting interest to the charity and not participate in any decision of the other charity trustees with respect to the matter in question. A charity trustee has a duty to ensure that a charity complies with any requirements of this Act ([subsection \(2\)](#)). However, [subsection \(3\)](#) provides a caveat that none of the above duties require a charity trustee to act otherwise than is imposed on them by other enactment. Hence, the general charity trustee duties do not exempt them from acting, for instance in accordance with health and safety legislation, or for charitable companies, with companies legislation. A breach of the general duties (to act in the interests of the charity, and to ensure that the charity complies with any direction, requirement, notice or duty imposed on it by virtue of the Act) is to be treated as misconduct in the administration of a charity, although OSCR must act proportionately in taking any action where it appears that misconduct has occurred. OSCR has a general duty (under [section 1\(9\)](#)) to act proportionately and only in cases in which action is needed in all its regulatory activities. In addition, (under [section 31\(10\)](#)), OSCR may not suspend a charity trustee if it considers they have acted honestly and reasonably and ought to be fairly excused. [Subsection \(5\)](#) requires all charity trustees to act collectively, taking steps that are reasonably practicable to ensure that any breach

*These notes relate to the Charities and Trustee Investment (Scotland)
Act 2005 (asp 10) which received Royal Assent on 14 July 2005*

of general duty by a charity trustee is corrected by that trustee and not repeated, and also that the trustee is removed as a trustee if they have been in serious or persistent breach of those duties.