

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 4: General and Supplementary

Power of charity to participate in certain financial schemes

108. **Section 96** provides a power, unless expressly prevented by its constitution, for every Scottish charity to participate in common investment schemes and common deposit schemes. These schemes (commonly known as common investment funds - or CIFs) may be registered with the Charities Commission only by charities registered in England and Wales. The Charities Act 1993 will have to be amended by the Home Office Charities Bill (section 23 of the Bill which was re-introduced into the House of Lords on 18 May 2005 provides for this), before Scottish charities are able to join CIFs.

Financial assistance for benevolent bodies

109. **Section 97** allows the Scottish Ministers to make payments to benevolent bodies in relation to their activities, or to any person in connection with work which enables benevolent bodies to implement their purposes better.

Rate relief for registered community amateur sports clubs

110. **Section 98** makes provision for organisations that are registered with the Inland Revenue under Section 58 of the Finance Act 2002 as a community amateur sports club to receive 80% mandatory relief from non-domestic rates. Local authorities have discretionary powers to top up this relief to 100%.

Population of Register etc.

111. **Section 99(1)** provides an arrangement to ensure that all existing Scottish Charities at the time that **paragraph 5(a)(ii) of schedule 4** of this Act is commenced become automatically entered by OSCR on the initial Scottish Charity Register. **Paragraph 7 of schedule 4** repeals the section of the 1990 Act which entitles a body recognised by the Inland Revenue (as eligible for tax relief through having exclusively charitable purposes) under the Income and Corporation Taxes Act 1988 to describe themselves as a “Scottish charity”.
112. **Subsection (3)** allows the Scottish Ministers to disapply **section 3(3)** by order for up to 18 months. Disapplying **section 3(3)** allows OSCR time to gather the necessary information on each charity before having to comply with the section. Ministers can also provide, by order, that for up to 12 months an unregistered charity or type of unregistered charity may continue to refer to itself as a “charity” despite not being on the Register. This provides a period of grace to allow existing (non-Scottish) UK and “foreign” charities operating in Scotland to apply to be entered on the Register by

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

OSCR. It also allows foreign charities that do not intend to register, a period of grace to stop referring to themselves as “charities”. The provision also ensures that any provision of the Act or of any other enactment will apply (with such necessary modifications) to such a body, as if it was entered onto the register, for so long as it is entitled to refer to itself as a “charity”.

113. **Subsection (4)** defines an unregistered charitable body as one established under the law of a country or territory other than Scotland which is entitled to refer to itself as a charity (by any means and in any language) in that country or territory.

Notices, applications etc.

114. **Section 100** sets out details relating to the giving of notices, directions and consents or requests for review, applications and decision made. The formal communications must be in writing, but may also be made by electronic means (e.g. electronic-mail etc.). **Subsection (4)** sets out the specific conditions and related timing for when a formal communication may be considered as having been made.

Offences by corporate bodies etc.

115. **Section 101** provides that when an offence under this Act is committed by a body corporate, a Scottish partnership or an unincorporated association, with the consent or connivance of a person controlling the body, the individual is also guilty of the offence and is liable to have proceedings taken against them.

Ancillary provisions

116. **Paragraph (a) of section 102** allows the Scottish Ministers to modify any enactment in order to ensure a body established by an enactment is able to meet the charity test in either, or both, of **sections 7(3) (a) or (b)** of the Act. This provision may be used if it were to be decided that an existing charitable non-departmental public body (NDPB) should remain a charity but was prevented from doing so by an enactment providing the Scottish Ministers with powers to control the distribution of the body’s assets or control of the body via a power of direction. Modifying the enactment would then ensure the body could comply with these sections of this Act.
117. **Paragraph (b) of section 102** provides ancillary powers for the Scottish Ministers to make other incidental, supplemental, consequential, transitional, transitory or saving provisions considered necessary for this Act.
118. **Section 103** sets out the procedures for the Scottish Ministers to make orders, regulations or rules by statutory instrument under the Act. Instruments are generally made by negative resolution, except orders under **section 7(5)**, **section 19(8)** and those under **section 102** which add to, replace or omit any part of the text of primary legislation, regulations under **sections 64(d)**, **83(1)** and commencement orders under **section 107(2)**. These exceptions are subject to affirmative resolution in the Parliament.
119. **Section 104** relates to **schedule 4** which contains minor and consequential amendments to other primary legislation in consequence of this Act. **Schedule 4** includes amendments to several Acts: