

CONSULTATION DRAFT

Charities and Trustee Investment (Scotland) Bill

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CONSULTATION DRAFT

Charities and Trustee Investment (Scotland) Bill

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.

PART 1

CHARITIES

CHAPTER 1

OFFICE OF THE SCOTTISH CHARITY REGULATOR

1 Office of the Scottish Charity Regulator

- (1) There is established a body corporate to be known as the Office of the Scottish Charity Regulator (in this Act referred to as “OSCR”), with the functions conferred on it by or under this Act and any other enactment.
- (2) OSCR’s general functions are—
 - (a) to keep a public register of charities,
 - (b) to encourage and facilitate compliance by charities with the provisions of this Act,
 - (c) to identify and investigate apparent misconduct in the administration of charities and to take remedial or protective action in relation to such misconduct.
- (3) 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.
- (4) Subsection (3) 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).
- (5) Schedule 1 makes further provision about OSCR.

2 Annual reports

- (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) OSCR must comply with any direction given by the Scottish Ministers as to the form and content of a general report.

CHAPTER 2

SCOTTISH CHARITY REGISTER

The Register

3 **Scottish Charity Register**

- (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 stewards,
 - (c) the purposes of the charity,
 - (d) where—
 - (i) a direction is given under section 10(3), 11(2), 13(6), 24(2), 26(1) or 27(5) to (9), or
 - (ii) a notice is given under section 27(4),
 in relation to the charity, the fact that the direction or notice has been given and the date on which it was given,
 - (e) any other information in relation to the charity which the Scottish Ministers by regulations require to be set out in the Register, and
 - (f) any other information in relation to the charity which OSCR considers appropriate.
- (4) OSCR must, if it is satisfied that a direction or notice of a type described in subsection (3)(d) has been complied with, remove reference to the direction or notice from the charity’s entry.
- (5) OSCR must, from time to time, review each entry in the Register and must, if it considers any information set out in the entry to be inaccurate, amend the entry accordingly and notify the charity in question.

Applications

4 **Application for entry in Scottish Charity Register**

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 stewards,
- (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),
 - (ii) otherwise requested by OSCR.

5 Determination of application

- (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 9, 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.
- (3) OSCR must give an applicant notice of its decision on the application which must, if the application is refused, set out the reasons for refusal.

6 Applications: further procedure

- (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 as they think fit.
- (2) Such regulations may in particular make provision about—
 - (a) information or documents which must (in addition to those mentioned in section 4(a) to (c)) 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,
 - (d) circumstances in which OSCR must refuse to enter a body in the Register.

The charity test

7 The charity test

- (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 advancement of civic responsibility or community development,
 - (f) the advancement of the arts, heritage, culture or science,
 - (g) the advancement of amateur sport,
 - (h) the advancement of human rights, conflict resolution or reconciliation,
 - (i) the advancement of environmental protection or improvement,
 - (j) the provision of accommodation to those in need of it by reason of age, ill-health, disability, financial hardship or other disadvantage,
 - (k) the provision of care to the aged, people with a disability, young people or children,
 - (l) the advancement of animal welfare,
 - (m) any other purpose intended to provide community benefit.
- (3) 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.
- (4) A body does not 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, or
 - (b) it is, or one of its purposes is to advance, a political party.

8 Guidance on charity test

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

Charity names and status

9 Objectionable names

- (1) A 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 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.

10 Change of name

- (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 28 days before doing so, give notice to OSCR specifying its proposed new name.
- (3) Unless OSCR, within 14 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 9.

11 Power of OSCR to require charity to change name

- (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) Section 10 applies in relation to a direction under subsection (2).
- (4) OSCR must remove from the Register any charity which fails to comply with a direction under subsection (2).

12 References to charitable status

- (1) A body entered in the Register may refer to itself as a “charity”, 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) The Scottish Ministers may by regulations make provision requiring each body entered in the Register to state that it is a charity in legible characters on such documents issued or signed on behalf of the charity as may be specified in the regulations.
- (4) The regulations may also—
 - (a) require each body entered in the Register to state such other information as may be so specified on such documents,
 - (b) provide that any statement required by the regulations may, in the case of documents which are otherwise wholly or mainly in a language other than English, be made in that other language.

Changes

13 Changes which require OSCR's consent

- (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 it.

- (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 proposal 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 28 days before the date on which the action is to be taken, give notice 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 14 days of the date on which notice is given under subsection (4), directs the charity not to take the action for a period of not more than 6 months as is specified in the direction, OSCR is to be taken as having consented to it.
- (7) A direction under subsection (6)—
 - (a) has effect from the date on which it is given,
 - (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 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.

14 Notification of other changes

- (1) A charity must give OSCR notice of—
 - (a) any change in the principal office of the charity or, where it does not have such an office, the name or address of the charity steward specified in the Register,
 - (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 13(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 13.

- (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

15 Removal from Register

OSCR must, within 28 days of the date on which it receives an application for removal from the Register from a charity—

- (a) remove the charity from the Register, and
- (b) give it notice of the date on which it is removed.

16 Removal from Register: protection of assets

- (1) A body removed from the Register continues to be under a duty to apply—
 - (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 from the Register.
- (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 24 and 25,
 - section 27(1) to (3) and (5) to (9),
 - section 28(1), (2), (4) and (5),
 - section 29(2) to (4),
 - section 30(1) to (3), (4)(a) to (c) and (f) to (h), (6) and (9)(b),
 - section 31(1), (2) and (4), and
 - section 33, and
 - (b) Chapter 5.
- (4) Where a body referred to in subsection (1) is to be wound up or dissolved, OSCR may direct the body to transfer the property and income referred to in that subsection to a charity—
 - (a) which has purposes closely resembling the purposes referred to in that subsection, and
 - (b) which has intimated that it is prepared to receive the property and income.

- (5) A charity receiving property in pursuance of a direction under subsection (4) may apply those property for its purposes as it thinks fit.

CHAPTER 3

INFORMATION ABOUT CHARITIES ETC.

17 Public access to Scottish Charity Register

- (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) The Register must be made available in such form and manner as OSCR thinks fit for making the information in it 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).

18 Power of OSCR to obtain documents and information

- (1) OSCR may by notice require any charity to provide to OSCR—
- (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.

19 Entitlement to be given information by charities

- (1) A person who requests a charity to provide a copy of its—
- (a) constitution,
 - (b) latest statement of accounts prepared under section 36,
- is, if the request is reasonable, entitled to be given that copy constitution or copy statement of accounts (if any) by the charity in such form as the person may reasonably request.
- (2) The Scottish Ministers may by order exempt charities which meet such criteria as may be specified in the order from the duty set out in subsection (1).

20 Sharing information

- (1) OSCR may, free from any obligation as to secrecy or other restriction on disclosure of information however imposed, disclose any information to a designated body.
- (2) OSCR may, subject to any such obligation or other restriction, disclose any information to any other person to whom this section applies.
- (3) OSCR may disclose information to any person to whom this section applies (whether or not a designated body)—
 - (a) for any purpose connected with the exercise of OSCR’s functions, or
 - (b) for the purpose of enabling or assisting the person to exercise any functions.
- (4) No obligation as to secrecy or other restriction on disclosure however imposed prevents—
 - (a) a relevant financial institution from disclosing any information to OSCR for the purposes of enabling or assisting OSCR to exercise its functions under section 34,
 - (b) a designated body from disclosing any information to OSCR for the purposes of enabling or assisting OSCR to exercise any of its functions.
- (5) A person to whom this section applies (other than a designated body) may, subject to any such obligation or other restriction, disclose information to OSCR for the purposes of enabling or assisting OSCR to exercise any of its functions.
- (6) This section applies to—
 - (a) any office-holder in the Scottish Administration,
 - (b) any government department (including a Northern Ireland department),
 - (c) any local authority,
 - (d) any constable, and
 - (e) any other public body or office-holder.
- (7) A reference in this section to—
 - (a) a designated body is a reference to any public body or office-holder specified as such by order made by the Scottish Ministers for the purposes of this section,
 - (b) a public body or office-holder includes a reference to any such body or office-holder in Scotland, in any other part of the United Kingdom or in a country or territory outside the United Kingdom.

21 Disclosure of information: supplemental

Sections 17 to 20 are without prejudice to any entitlement to receive or disclose information under any enactment or otherwise.

22 False or misleading information etc.

- (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 OSCRC, or provided to OSCRC 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 which the person is, or which that person knows any other person is, required by or under this Act to provide to OSCRC.
- (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.

23 Co-operation

- (1) OSCRC must, so far as consistent with the proper exercise of its functions, seek to secure co-operation between it and other relevant regulators.
- (2) Co-operation does not include the sharing of information which OSCRC or any person with whom it is co-operating is prevented by law from disclosing.
- (3) 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 OSCRC, or
 - (b) conferred by any enactment and designed to allow the body or office-holder to regulate persons for other purposes.

CHAPTER 4

SUPERVISION OF CHARITIES ETC.

Inquiries

24 Inquiries about charities etc.

- (1) OSCRC may at any time make inquiries, either generally or for particular purposes, with regard to—
 - (a) a charity,
 - (b) any other body which appears to OSCRC to represent itself as a charity,
 - (c) a person not falling within paragraph (a) or (b) which appears to OSCRC to act, or to represent itself as acting, on behalf of—
 - (i) a charity, or
 - (ii) a body referred to in paragraph (b),
 in any activity which the charity or body could otherwise undertake itself,
 - (d) a person which appears to OSCRC to represent any body which is not a charity as a charity,
 - (e) any particular type of charities, of bodies falling within paragraph (b), or of persons falling within paragraph (c) or (d).

- (2) 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.
- (3) A direction under subsection (2)—
 - (a) has effect from the date on which it is given,
 - (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 it is given.
- (4) A person who refuses or fails, without reasonable excuse, to comply with a direction under subsection (2) is guilty of an offence.
- (5) A person guilty of an offence under subsection (4) 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.

25 Inquiries about charities etc.: power to obtain documents and information

- (1) OSCR may by notice require any person to provide to OSCR—
 - (a) any document, or a copy of or extract from any document, in that person's possession or control,
 - (b) documents of any type, or copies of or extracts from such documents, in that person's possession or control,
 - (c) any information or explanation,which OSCR considers necessary for the purposes of inquiries under section 24.
- (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.
- (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 refuses or fails, without reasonable excuse, 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.

26 Powers of OSCR where charity no longer meets charity test

- (1) Where OSCR is satisfied, as a result of inquiries under section 24, 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,
 - (b) apply to the court for approval under section 55 of a reorganisation scheme in relation to the charity's constitution, or
 - (c) remove the charity from the Register.
- (2) OSCR must, if a charity fails to comply with a direction under subsection (1)(a), remove the charity from the Register.
- (3) OSCR must, within 7 days of removing a body from the Register under this section, notify the body of the removal and the reasons for it.

27 Other powers of OSCR following inquiries

- (1) Subsections (4), (6) and (7) apply where OSCR is satisfied, as a result of inquiries under section 24 that—
 - (a) there has been misconduct in the administration of a charity, or
 - (b) 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 OSCR is satisfied, as a result of inquiries under section 24, that a body which is not a charity is being or has been represented as a charity.
- (3) Subsections (8) and (9) apply where OSCR is satisfied, as a result of inquiries under section 24, that there is or has been misconduct by a person falling within paragraph (c) of subsection (1) of that section in any activity which the person undertakes for the charity or body referred to in that paragraph.
- (4) OSCR may, by notice, suspend any charity steward, or agent or employee, of the charity who appears to it—
 - (a) to have been responsible for or privy to the misconduct,
 - (b) to have by that person's conduct contributed to it or facilitated it, orto be unable or unfit to perform that person's functions in relation to the property of the charity.
- (5) OSCR may direct—
 - (a) the body representing itself as a charity,
 - (b) the person representing the body as a charity,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, 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.

28 Section 27 notices and directions

- (1) A notice under subsection (4) and a direction under any of subsections (5) to (9) of section 27—
 - (a) has effect for such period of not more than 6 months from the date on which the notice or direction is given as is specified in the notice or direction,
 - (b) may be withdrawn or revoked at any time,
 - (c) may be varied, but not so as to have effect for a period of more than 6 months from that date.
- (2) Where such a notice or direction has been given, a further notice or direction may be given under any of the provisions mentioned in subsection (1) but the further notice or direction ceases to have effect on the expiry of the period of 6 months from the date on which the original notice or direction was given (unless stated to cease to have effect earlier).
- (3) A notice under section 27(4) must be given to the person being suspended and to the charity in question.
- (4) A direction under subsection (5)(b) or any of subsections (7) to (9) of section 27 must be given to the person being directed and to the charity or body in question.
- (5) A person who refuses or fails, without reasonable excuse, to comply with a direction under any of subsections (5) to (9) of section 27 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.

29 Reports on inquiries

- (1) OSCR must, if as a result of inquiries under section 24 it—
 - (a) gives a direction, or removes a charity from the Register, under section 26,
 - (b) suspends a person under subsection (4) of section 27, or
 - (c) gives a direction under any of subsections (5) to (9) of that section,prepare a report of the subject matter of the inquiries.

- (2) OSCR may prepare a report of the subject matter of any other inquiries under section 24.
- (3) 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,
 - (b) contain any particulars which, in OSCR’s opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report,
 unless OSCR determines that it is necessary to do so.
- (4) OSCR must—
 - (a) send a copy of the report to the person in respect of whom inquiries were made, and
 - (b) publish the report or such other statement of the result of inquiries as OSCR thinks fit in such manner as OSCR thinks fit.

Powers of Court of Session

30 Powers of Court of Session

- (1) Where, on an application by OSCR, the Court of Session is satisfied that—
 - (a) there is or has been misconduct in the administration of a charity, or
 - (b) 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 (4)(a) and (c) to (g).
- (2) Where, on an application by OSCR, the Court of Session is satisfied 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 (4)(a) to (g).
- (3) Where, on an application by OSCR, the Court of Session is satisfied 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 (4)(f) to (h).
- (4) Those powers are power to—
 - (a) interdict (whether temporarily or permanently) the charity from such action as the court, on the application of OSCR, thinks fit,
 - (b) interdict (whether temporarily or permanently) the body from representing itself as a charity or from such other action as the court, on the application of OSCR, 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,
 - (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, on the application of OSCR, thinks fit.
- (5) Where the court appoints a trustee in pursuance of subsection (4)(d), section 22 of the Trusts (Scotland) Act 1921 (c.58) applies as if the trustee had been appointed under that section.
- (6) The power in subsection (4)(g) applies despite anything in the constitution of the charity or body.
- (7) Subsection (8) applies where, on an application by OSCR, the Court of Session is satisfied that there is or has been misconduct by a person falling within section 24(1)(c) in any activity which the person undertakes on behalf of the charity or body referred to in that provision.
- (8) 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 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.
- (9) The court may—
 - (a) recall the suspension of a person in pursuance of subsection (4)(e),
 - (b) vary or recall an order in pursuance of subsection (4)(f) or (g) or under subsection (8)(b) or (c).

31 Transfer schemes

- (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 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 that—
 - (a) there is or has been misconduct in the administration of the charity,
 - (b) 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) 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 which is or has been representing itself as a charity only if it is satisfied that—
 - (a) the body is or has been representing itself as a charity, and
 - (b) the transfer provided for by the scheme is reasonable.
- (4) The court may approve a scheme under subsection (2) or (3) subject to modifications.

32 Powers in relation to English and Welsh charities

- (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—
 - (a) which has purposes closely resembling 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 securing its proper application.

33 Expenses

In proceedings before it under sections 30 to 32 in relation to a charity, the Court of Session may, instead of awarding expenses against the charity, award expenses against a charity steward of the charity, or against any such charity stewards jointly and severally.

Dormant charity accounts

34 Dormant accounts of charities

- (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 enquiries, 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) a body which was, prior to the repeal of Part 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), a recognised body for the purposes of that Part.
- (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 35(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 of—
 - (a) OSCR in respect of an amount withdrawn or transferred from an account by virtue of this section is a complete discharge of the relevant financial institution,
 - (b) a charity in respect 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
 - (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.

35 Dormant accounts of charities: procedure and interpretation

- (1) The Scottish Ministers may, by regulations, make provision—
 - (a) as to the procedure to be followed by OSCR under section 34,
 - (b) as to 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 34 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 34(1)(a).

CHAPTER 5

CHARITY ACCOUNTS

36 Accounts

- (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 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 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,
 - (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.

37 Failure to provide statement of account

- (1) This section applies where a charity fails, within such period as is specified in regulations under subsection (4) of section 36, to send a copy of a statement of account for a financial year 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 prior notice, to enter the premises of 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,
 - (c) to require any charity steward, 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 stewards of the charity are personally liable jointly and severally for 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 steward 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.

CHAPTER 6

SCOTTISH CHARITABLE INCORPORATED ORGANISATIONS

38 Scottish charitable incorporated organisations

- (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,
 - (b) a principal office, which must be in Scotland,
 - (c) one or more members.
- (3) Its membership may, but need not, consist of or include some or all of its charity stewards.
- (4) The members may be—

- (a) liable to contribute to the assets of the SCIO if it is wound up, or
- (b) not so liable.

39 Constitution

- (1) A SCIO's constitution must state—
 - (a) its name,
 - (b) its purposes,
 - (c) whether or not its members are liable to contribute to its assets if it is wound up and (if they are) up to what amount.
- (2) A SCIO's constitution must make provision—
 - (a) about who is eligible for membership, and how a person becomes a member, and
 - (b) about the appointment of one or more persons ("charity stewards") who are to be charged with the general control of the SCIO's administration, and about any conditions of eligibility for becoming a charity steward.
- (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.

40 Name and status

- (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.
- (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) Subsections (3) and (4) of section 12 do not apply in relation to a SCIO.

41 Offences etc.

- (1) A charity steward 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 40, 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).

42 Regulations relating to SCIOs

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, registration in the Register and the effect of registration,
- (b) the administration of a SCIO,
- (c) amalgamation of SCIOs and transfer of a SCIO's property to another SCIO,
- (d) the winding up, insolvency or dissolution of a SCIO,
- (e) such other matters in connection with the provision made by this Chapter as they think fit.

CHAPTER 7

REVIEWS AND APPEALS

Reviews

43 Decisions subject to review

- (1) Any decision by OSCR to—
- (a) refuse an application for entry in the Register, including entry as an SCIO,
 - (b) refuse to consent to a charity changing its name,
 - (c) refuse to give a direction under section 11(2),
 - (d) refuse to consent to a charity taking any action set out in section 13(2),
 - (e) give a direction under section 24(2),
 - (f) make a requirement under section 25(1),
 - (g) suspend a person under section 27(4),
 - (h) give a direction under section 27(5) or (8),
 - (i) give a direction under section 27(6), (7) or (9),
 - (j) give a direction under section 41(2),
 - (k) remove a charity from the Register,
 - (l) refuse to designate a charity as a designated religious charity or designated national collector,

- (m) withdraw the designation of a charity as a designated religious charity or designated national collector, or
 - (n) give a direction under section 58(6) in relation to a charity,
- is subject to review in accordance with sections 44 and 45.
- (2) A notice of a decision referred to in subsection (1) must specify the right to request a review of the decision and the period within which such a request must be made.

44 Right to request review

- (1) OSCR must review a decision referred to in section 43(1) if a person specified in subsection (2) requests it to do so.
- (2) Those persons are—
- (a) in relation to a decision referred to in paragraph (a), (e), (g), (h) or (j) of subsection (1) of section 43, the person in respect of whom the decision was made,
 - (b) in relation to a decision referred to in paragraph (c) of that subsection, the charity which requested OSCR to conduct a review under section 11,
 - (c) in relation to any other decision referred to in that subsection, the charity in respect of which the decision was made.
- (3) The duty in subsection (1) applies only where the request is made within the period of 14 days beginning with the day on which the decision was notified to the person making the request.

45 Review of decisions: procedure etc.

- (1) OSCR must publish the procedures in accordance with which reviews under section 44 are to be conducted.
- (2) OSCR must, on completion of a review, confirm, vary, reverse or revoke its earlier decision.
- (3) OSCR must—
- (a) complete a review within 14 days of the day on which it received the request to carry it out, and
 - (b) give notice of its decision under subsection (2) to the person who requested the review setting out OSCR's reasons for the decision.
- (4) Where OSCR is required to review a decision referred to in section 43(1)(f), (k) or (m), the decision is of no effect unless and until OSCR gives notice that it has been confirmed (whether with or without variations).

Appeals

46 Scottish Charity Appeals Panel

- (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 47.
- (2) Schedule 2 makes further provision about the Panel.

47 Appeals to Scottish Charity Appeals Panel

- (1) Any decision by OSCRC—
 - (a) under section 45(2) to confirm, with or without variations, a decision referred to in subsection (1) of section 43 (other than a decision referred to in paragraph (e) or (f) of that subsection), or
 - (b) under section 48(1) to confirm, with or without variations, an earlier decision under section 45(2) or 48(1),may be appealed to the Panel by the person whose request caused OSCRC to make the decision under section 45(2) or, as the case may be, who appealed the earlier decision to the Panel.
- (2) An appeal under subsection (1) must be made not later than 28 days after the date on which the decision was notified to the person entitled to appeal it.
- (3) The Panel may—
 - (a) confirm a decision appealed to it,
 - (b) quash such a decision and direct OSCRC 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 OSCRC, together with the Panel's reasons for doing so, for reconsideration.
- (4) The Panel may not award expenses to OSCRC or to any person who appeals a decision.

48 Reconsideration of decision remitted back to OSCRC

- (1) OSCRC must, after reconsidering any decision remitted back to it under section 47(3)(c), confirm, vary, reverse or revoke the decision.
- (2) OSCRC must—
 - (a) complete its reconsideration within 14 days of the day on which the decision was remitted back to it,
 - (b) give notice of its decision under subsection (1) to the person who appealed its earlier decision to the Panel which must set out OSCRC's reasons for its decision under that subsection.

49 Appeals to Court of Session

- (1) Any decision of the Panel under section 47(3) may be appealed by—
 - (a) the person who appealed to the Panel, or
 - (b) OSCRC,to the Court of Session.
- (2) Any decision of OSCRC to suspend a person by notice under section 27(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 to take such action, if any, as the Court thinks fit by such time as may be specified in the direction.

CHAPTER 8

GENERAL

Charity stewards

50 Charity stewards: general duties

- (1) A charity steward 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 exercises its functions 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) where exercising functions as a charity steward in the course of a business or profession, use any special knowledge and expertise that it is reasonable to expect of a person acting in the course of that business or profession.
- (2) The charity stewards 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 steward 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) A breach of the duty under subsection (2) in relation to a charity's duties under section 10 or 13, or under regulations under 12(3), is an offence.
- (6) A charity steward guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

51 Disqualification

- (1) The persons specified in subsection (2) are disqualified from being charity stewards.
- (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 30 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(1)(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 or mismanagement 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 (c.46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I.2002/3150).

52 Disqualification: supplementary

- (1) A person who acts as a charity steward while disqualified by virtue of section 51 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 the statutory maximum 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 steward by a person disqualified by virtue of section 51 from being a charity steward are not invalid by reason only of the disqualification.
- (3) In section 51(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.

Religious charities

53 Designated religious charities

- (1) OSCR may designate as a designated religious charity a charity which appears to it—

- (a) to have as its principal purpose the advancement of religion,
 - (b) to have as its principal activity the regular holding of public worship, and
 - (c) to satisfy each of the conditions in subsection (2).
- (2) Those conditions are—
- (a) that the charity has been established in Scotland for at least 10 years,
 - (b) that the charity has a membership of at least 3,000 persons resident in Scotland who are at least 16 years of age,
 - (c) that the internal organisation of the charity is 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) in particular, 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 36.
- (3) OSCR may determine that the condition in subsection (2)(a) 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.
- (4) The provisions set out in subsection (5) 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).
- (5) Those provisions are—
- section 24(2),
 - section 27(4),
 - section 30(4)(c) to (e),
 - section 51.
- (6) 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 (c) of subsection (1) is no longer satisfied in relation to the charity, or
 - (b) in consequence of an investigation of the charity or any component element under section 24, OSCR has exercised any of the powers in section 27(5) or (6) in relation to the charity or component element and considers that it is no longer appropriate for the charity to be a designated religious charity.

- (7) A notice under subsection (6) must—
 - (a) state OSCR’s reasons for its decision to withdraw the designation, and
 - (b) specify the date when the withdrawal takes effect, which must be a date not less than 21 days after the date of service of the notice.

PART 2

REORGANISATION OF CHARITIES, PUBLIC TRUSTS AND ENDOWMENTS

Introductory

54 Interpretation of Part 2

- (1) This section applies for the interpretation of this Part.
- (2) “The appropriate persons” means—
 - (a) in the case of a charity, its charity stewards,
 - (b) in the case of a public trust which is not a charity, its trustees.
- (3) “The reorganisation conditions” are—
 - (a) that some or all of the purposes of the charity or trust—
 - (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) in the case of a charity, have ceased to be charitable purposes, or
 - (iv) (in any case) 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 or trust provide a use for only part of its property.
- (4) A “reorganisation scheme” is a scheme for—
 - (a) variation of the constitution of the charity or trust (whether or not in relation to its purposes),
 - (b) transfer of the property of the charity or trust (after satisfaction of any liabilities)—
 - (i) in the case of a charity, to another charity,
 - (ii) in any other case, to a charity or another public trust,(whether or not involving a change to the purposes of the other charity or trust), or
 - (c) amalgamation of the charity or trust—
 - (i) in the case of a charity, with another charity,
 - (ii) in any other case, with a charity or public trust.
- (5) Nothing in section 55 or 56 affects the power of the Court of Session to approve a cy près scheme in relation to any charity or public trust.

Reorganisation of charities and public trusts

55 Charities: applications by OSCR

- (1) Where, on an application by OSCR in relation to a charity, the court considers that—
 - (a) any of the reorganisation conditions is satisfied, and
 - (b) a reorganisation scheme proposed by OSCR will 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,the court may approve the scheme.
- (2) Not less than 28 days before making an application under subsection (1) OSCR must notify the charity of its intention to make the application.
- (3) In this section, “the court” means—
 - (a) in the case of an application in relation to a charity which meets such criteria as the Scottish Ministers may by order specify—
 - (i) the sheriff for the place with which the charity has its closest and most real connection, which failing
 - (ii) the sheriff for the place where any of the charity stewards resides, which failing
 - (iii) the sheriff for the sheriffdom in which OSCR has its principal office,
 - (b) in any other case, the Court of Session.

56 Charities and public trusts: applications by charity stewards or trustees

- (1) Where, on an application by the appropriate persons, the court is satisfied that—
 - (a) any of the reorganisation conditions is satisfied,
 - (b) the charity or public trust does not have power to alter its constitution, and
 - (c) a reorganisation scheme proposed by the appropriate persons will enable the resources of the charity or trust to be applied to better effect consistently with the spirit of its constitution, having regard to changes in social and economic conditions since it was constituted,the court may approve the scheme.
- (2) The appropriate persons must intimate an application under this section to OSCR.
- (3) OSCR may enter appearance as a party in proceedings on the application.
- (4) No expenses are claimable by or against OSCR in any such proceedings.
- (5) In this section, “the court” means—
 - (a) in the case of an application in relation to a charity or public trust which meets such criteria as the Scottish Ministers may by order specify—
 - (i) the sheriff for the place with which the charity or trust has its closest and most real connection, which failing
 - (ii) the sheriff for the place where any of the charity stewards or trustees resides, which failing
 - (iii) the sheriff for the sheriffdom in which OSCR has its principal office,

- (b) in any other case, the Court of Session.

57 Small charities and public trusts

- (1) This section applies to a charity or public trust which—
 - (a) meets the criteria specified in an order under section 58(10), and
 - (b) does not have power to alter its constitution.
- (2) Where a majority of the appropriate persons are of the opinion that—
 - (a) any of the reorganisation conditions is satisfied, and
 - (b) taking any of the reorganisation steps would enable the resources of the charity or trust to be applied to better effect consistently with the spirit of its constitution,they may pass a resolution to take that step.
- (3) The reorganisation steps are—
 - (a) variation of the constitution of the charity or trust (whether or not in relation to its purposes),
 - (b) transfer of the property of the charity or trust (after satisfaction of any liabilities)—
 - (i) in the case of a charity, to another charity,
 - (ii) in any other case, to a charity or another public trust,(whether or not involving a change to the purposes of the other charity or trust),
 - (c) amalgamation of the charity or trust—
 - (i) in the case of a charity, with another charity,
 - (ii) in any other case, with another public trust.
- (4) This section does not apply to—
 - (a) any charity or public trust constituted under a Royal Charter or warrant or under any enactment,
 - (b) any trust to which section 16 (property held on trust by local authorities) of the Local Government etc. (Scotland) Act 1994 (c.39) applies.

58 Small charities and public trusts: further provision

- (1) In considering whether to pass a resolution under section 57(2) and the nature of the resolution, the appropriate persons must—
 - (a) where the purposes of the charity or trust relate to a particular locality, have regard to the circumstances of the locality,
 - (b) have regard to any economy which might be achieved by amalgamating 2 or more charities or trusts.
- (2) A resolution to vary the purposes of the charity or trust is competent only if, so far as practicable, the variation does not constitute an unreasonable departure from the spirit of the original constitution.
- (3) A resolution to—
 - (a) transfer property of the charity or trust to, or

- (b) amalgamate the charity or trust with,
 a charity or public trust is competent only if, so far as practicable, the purposes of the other charity or trust are sufficiently similar to those of the first charity or trust as not to constitute an unreasonable departure from the spirit of its constitution.
- (4) Before passing a resolution referred to in subsection (3), the appropriate persons must ensure that the appropriate persons in relation to the other charity or trust agree to the transfer of property or amalgamation.
- (5) A resolution under section 57(2) is of no effect unless the appropriate persons, before passing it, have—
- (a) advertised the proposed variation, transfer of property or amalgamation in accordance with any order under subsection (10) of this section,
 - (b) intimated the proposal to OSCR, and
 - (c) had regard to any representations made, within such period as such an order may specify, by any person with an interest in the charity or trust.
- (6) If OSCR considers that the proposed variation, transfer of property or amalgamation should not proceed, it may direct the appropriate persons accordingly and must give reasons for giving the direction.
- (7) The trustees of a public trust which is not a charity may, by summary application, appeal to the sheriff against a direction given under subsection (6).
- (8) An appeal under subsection (7) must be lodged within 14 days of the date of receipt of the direction by the appropriate persons.
- (9) On an appeal under subsection (7) the sheriff may confirm or quash the direction.
- (10) The Scottish Ministers may by order make provision—
- (a) specifying criteria for the purposes of section 57(1)(a),
 - (b) as to the procedure to be followed in relation to resolutions under subsection (2) of that section and advertisements under subsection (5) of this section.

Endowments

59 Endowments

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 81 of the Charities and Trustee Investment (Scotland) Act.”

PART 3

FUNDRAISING AND FUNDING FOR BENEVOLENT BODIES

Preliminary

60 Interpretation of Part 3

- (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,

“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,

“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,

“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,

“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).

- (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—
 - (i) such sum as may be specified by regulations under section 63 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, 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.
- (5) 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.
- (6) In construing references to soliciting or otherwise procuring money or promises of money, it is immaterial whether any consideration is, or is to be, given in return for the money or promises of money.
- (7) 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.
- (8) 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 regarded 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).
- (9) In this Part “services” includes facilities, and in particular—
- (a) access to any premises or event,

- (b) membership of any organisation,
 - (c) the provision of advertising space, and
 - (d) the provision of any financial facilities,
- and references to the supply of services are to be construed accordingly.

Control of fundraising

61 Prohibition on professional fundraising without formal agreement

- (1) It is unlawful—
- (a) for a professional fundraiser to solicit money or promises of money for the benefit of, 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 that—
- (a) a person has contravened or is contravening subsection (1) in relation to the body, and
 - (b) 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 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 by virtue of section 63(2)(b).

62 Prevention of unauthorised fundraising

- (1) Where on the application of a benevolent body, the sheriff is satisfied—

- (a) that the body has complied with subsection (3),
 - (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 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 make an application under this section for an interdict.
 - (4) Where—
 - (a) a person on whom a notice under subsection (3) is served complies with the notice, but
 - (b) the person subsequently begins to carry on activities which are the same, or substantially the same, as those in respect of which the notice was served,

the body need not, for the purposes of an application under subsection (1) made by it, in respect of the activities carried on by that person, not more than 12 months after the date of service of the notice, serve a further notice on the person.
 - (5) No application may be made under subsection (1) by a body in respect of anything done by a professional fundraiser or commercial participator in relation to the body.

63 Regulations about fundraising

- (1) The Scottish Ministers may, after consulting such persons as they think fit, make regulations about—

- (a) 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) representations made by commercial participators in relation to benevolent contributions.
- (2) Such regulations may, in particular, make provision—
- (a) specifying sums for the purposes of section 60(3)(e),
 - (b) about the form and content of—
 - (i) agreements for the purposes of section 61,
 - (ii) notices under section 62(3),
 - (c) about the information 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) for the refund of payments, or the cancellation of agreements, made in response to such solicitations or representations in such circumstances as the regulations may specify,
 - (e) requiring professional fundraisers or commercial participators to make available to benevolent bodies with whom they have agreements for the purposes of section 61 books, documents or other records (however kept) which relate to the bodies,
 - (f) 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.
- (3) In subsection (2)(f) 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
 - (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 participant on trust for such a body.
- (4) Regulations under this section may provide that a person who fails, without reasonable excuse, 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.

64 Fundraising by benevolent bodies: general power

- (1) The Scottish Ministers may, after consulting such persons as they think fit, make regulations generally for or in connection with regulating benevolent fundraising by persons specified in subsection (3).
- (2) 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.

- (3) The persons referred to in subsection (1) (“benevolent fundraisers”) are—
 - (a) benevolent bodies and companies connected with them,
 - (b) persons concerned in the management or control of benevolent bodies,
 - (c) persons connected with benevolent bodies.
- (4) Regulations under this section may, in particular, make provision—
 - (a) about the information and identification to be provided by benevolent fundraisers in carrying on benevolent fundraising,
 - (b) for the refund of payments, or the cancellation of agreements, made in response to benevolent fundraising in such circumstances as the regulations may specify,
 - (c) 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—
 - (i) it does not unreasonably intrude on the privacy of those from whom funds are being solicited or procured,
 - (ii) it does not involve the making of unreasonably persistent approaches to persons to donate funds,
 - (iii) it does not result in undue pressure being placed on persons to donate funds,
 - (iv) it does not involve the making of any false or misleading representation about any of the matters mentioned in subsection (5).
- (5) 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,
 - (c) the activities, achievements or finances of such a body or company.
- (6) Regulations under this section may provide that a person who fails, without reasonable excuse, 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.
- (7) For the purposes of this section a person is connected with a benevolent body if the person is an employee or agent of—
 - (a) the body,
 - (b) the persons concerned in its management or control, or
 - (c) a company connected with it,
 or is a volunteer acting on behalf of the body or such a company.
- (8) The power to make regulations under section 63 is not prejudiced by this section.

Public benevolent collections

65 Meaning of “public benevolent collection”

- (1) This section applies for the interpretation of sections 66 to 71.

- (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) 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—
 - (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.

66 Regulation of public benevolent collections

- (1) Where a public benevolent collection is held in the area of a local authority without the consent of the authority under section 67, 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) a collection by a designated national collector,
 - (b) a collection which takes place in the course of a public meeting,
 - (c) a collection which 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 if the occupier is the organiser of the collection,
 - (d) a collection which takes place by means of an unattended receptacle in a public place.
- (3) In subsection (2) the occupier, in relation to unoccupied land, is the person entitled to occupy it.

67 Local authority consents

- (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).
- (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 badges and certificates of authority of such types as may be specified in regulations made by the Scottish Ministers,
 - (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, frequency or area of the collection 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 authority that the amount likely to be applied 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) that the organiser of the collection has been convicted of—
 - (i) an offence under section 66(1) or 71(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—
 - (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 69.

68 Designated national collectors

- (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 71 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) Where the local authority considers that the public benevolent collection would be likely to cause undue public inconvenience it may decide to prohibit the collection.
- (9) A decision under subsection (8) must be made not later than one month after the date of the notification under subsection (7).

- (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 69.

69 Appeals

- (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 67—
- (a) granting consent subject to conditions,
 - (b) refusing consent,
 - (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 68(8).
- (4) An appeal under this section must be lodged within 14 days of the date of receipt of the notice under section 67(9) or, as the case may be, 68(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.

70 Application of funds

- (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.

71 Regulations relating to public benevolent collections

- (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.

Financial assistance

72 Financial assistance for benevolent bodies

- (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 better to implement their purposes.
- (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.

PART 4

INVESTMENT POWERS OF TRUSTEES

73 Extension of general powers of trustees

- (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 land).

(eb) To acquire land for any reason other than investment.”,
 - (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),
- “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.”

74 Exercise of power of investment

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.
- (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 must (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.”

75 Power to amend enactments

- (1) The Scottish Ministers may by order make such amendments of—
- (a) any local, personal or private Act of Parliament,
 - (b) any other Act of Parliament or Act of the Scottish Parliament,

as appear to them appropriate in consequence of or in connection with sections 73 and 74.

- (2) Before making an order under subsection (1)(a) the Scottish Ministers must consult any person who appears to them to be affected by any proposed amendment.
- (3) Schedule 3 makes amendments consequential on those sections.

PART 5

SUPPLEMENTARY

76 Notices, applications etc.

- (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) 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 or made to a person if it is—
 - (a) delivered to the person,
 - (b) sent 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 the Register (or, where it does not have such an office, to the charity steward whose details are 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
 - (c) sent to the person in some other reasonable manner (including by electronic means).
- (5) 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.
- (6) In subsection (5), “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.

77 **Offences by bodies corporate etc.**

- (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.
- (3) Any penalty imposed on a body corporate, Scottish partnership or, as the case may be, unincorporated association on conviction of an offence under this Act is to be recovered by civil diligence in accordance with section 221 of the Criminal Procedure (Scotland) Act 1995 (c.46).

78 **Ancillary provision**

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

79 **Orders, regulations and rules: general**

- (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 78 may modify any enactment, instrument or document.
- (4) A statutory instrument containing an order, regulations or rules under this Act (except sections 78 (where subsection (5) applies) and 82(2)) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

- (5) No order under section 78 containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.

80 Minor and consequential amendments and repeals

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

81 General interpretation

In this Act, unless the context otherwise requires—

“applicant” has the meaning given in section 4(a),

“charitable purposes” means the purposes set out in section 7(2),

“charity” means a body entered in the Register,

“charity stewards”—

- (a) in relation to a charity which is a body corporate (other than a SCIO) means—

(i) its directors, or

(ii) where the charity is managed by its members, its members,

- (b) in relation to a charity which is a body of trustees, means its trustees,

- (c) in relation to a charity which is an unincorporated association, means each of the persons in accordance with whose directions or instructions the managers of the charity’s affairs (whether or not the same persons) are accustomed to act,

- (d) in relation to a SCIO, has the meaning given in section 39(2)(b),

“charity test” is to be construed in accordance with section 7,

“constitution” means, in relation to a charity or other body, the trust deed, memorandum and articles of association or other instruments establishing or regulating it,

“designated national collector” means a charity designated as such under section 68(4),

“designated religious charity” means a charity designated as such under section 53(1),

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

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

“the Panel” mean a Scottish Charity Appeals Panel constituted in accordance with 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,

“SCIO” has the meaning given in section 38.

82 Short title and commencement

- (1) This Act may be cited as the Charities and Trustee Investment (Scotland) Act.
- (2) This Act (except sections 78 and 79 and this section) comes into force on such day as the Scottish Ministers may by order appoint.

SCHEDULE 1
(introduced by section 1)

OFFICE OF THE SCOTTISH CHARITY REGULATOR

Membership

- 1 (1) OSCR is to consist of not fewer than 4, nor more than 8, members appointed by the Scottish Ministers from amongst those appearing to them to have knowledge and skills relevant to the functions of OSCR.
- (2) An individual is disqualified from appointment as and from being a member of OSCR if the individual is—
 - (a) a member of the Scottish Parliament,
 - (b) a member of the House of Commons,
 - (c) a member of the European Parliament,
 - (d) an office-holder in the Scottish Administration,
 - (e) a charity steward,
 - (f) an individual of such other description as may be prescribed by order by the Scottish Ministers.

Tenure and removal from office

- 2 (1) Each member of OSCR—
 - (a) is to be appointed for such period as is specified in the appointment,
 - (b) may, by notice to the Scottish Ministers, resign as a member,
 - (c) in other respects, holds and vacates office on such terms and conditions as the Scottish Ministers may determine,
 - (d) after ceasing to hold office, may be reappointed as a member.
- (2) The Scottish Ministers may remove a member from office if satisfied that—
 - (a) the member's estate has been sequestrated or the member has been adjudged bankrupt, has made an arrangement with creditors or has granted a trust deed for creditors or a composition contract, or
 - (b) the member—
 - (i) has been absent from meetings of OSCR for a period longer than 6 consecutive months without the permission of OSCR, or
 - (ii) is unable to discharge the member's functions as a member or is unsuitable to continue as a member,
 - (c) it is necessary or expedient to do so in connection with the management of the affairs of OSCR.

Chairing

- 3 (1) The Scottish Ministers must appoint—
 - (a) one of the members of OSCR to chair OSCR, and

- (b) another of those members to act as deputy to that member.
- (2) A member appointed to chair OSCR or to act as deputy to that member holds and vacates office as such in accordance with the terms of the appointment to that office.
- (3) A member so appointed may, by notice to the Scottish Ministers, resign from office as such.
- (4) A member so appointed vacates office on ceasing to be a member of OSCR.
- (5) Where a member—
 - (a) is appointed to chair OSCR or to act as deputy to that member, or
 - (b) ceases to hold office as such,
 the Scottish Ministers may vary the terms of the member's appointment as a member of OSCR so as to alter the date on which office as a member is to be vacated.

Members' allowances

- 4 OSCR must pay to its members such allowances as it may, with the approval of the Scottish Ministers, determine in respect of expenses properly incurred in the performance of their duties.

Chief executive and other staff

- 5 (1) OSCR—
- (a) must appoint a chief executive, and
 - (b) may appoint such other employees as it considers appropriate.
- (2) The terms and conditions of the chief executive and any other employees, and the number of any other employees, require the approval of the Scottish Ministers.

Proceedings

- 6 The quorum of OSCR and the arrangements for its meetings are for OSCR to determine.

Delegation of powers

- 7 (1) Anything authorised or required under any enactment to be done by OSCR may be done by any member or employee of OSCR who is authorised (whether generally or specifically) for the purpose by it.
- (2) Nothing in sub-paragraph (1) prevents OSCR from doing anything that any of its members or employees has been authorised or required to do.

Validity of proceedings and actings

- 8 The validity of any proceedings or actings of OSCR is not affected by—
- (a) any vacancy among its members, or
 - (b) any defect in the appointment of a member.

SCHEDULE 2
(introduced by section 46)

SCOTTISH CHARITY APPEALS PANEL

Panel members

- 1 (1) The Scottish Ministers must appoint such number of persons as they think fit to be eligible (for such period, not exceeding 5 years, as the Scottish Ministers may specify) to serve as members of a Panel constituted under section 46(1).
- (2) At least one of the persons so appointed must be, and have been for at least 5 years—
 - (a) a solicitor holding a practising certificate issued in accordance with Part 2 of the Solicitors (Scotland) Act 1980 (c.46), or
 - (b) an advocate.
- (3) An individual is disqualified from being so appointed, and from being a Panel member, if the individual—
 - (a) is a Lord of Appeal in Ordinary or holds any of the judicial offices specified in Part 1 of schedule 1 to the House of Commons Disqualification Act 1975 (c.24),
 - (b) is a member of the Scottish Parliament,
 - (c) is an office-holder in the Scottish Administration,
 - (d) is an individual of such other description as may be prescribed by order by the Scottish Ministers.
- (4) Each Panel is to consist of 3 of the persons appointed under paragraph 1(1) (at least one of whom must meet the criteria specified in paragraph 1(2)).

Tenure and removal from office

- 2 (1) Each person appointed under paragraph 1(1)—
 - (a) is to be appointed for such period as is specified in the appointment,
 - (b) if appointed to serve as a Panel member, holds and vacates office as a Panel member on such terms and conditions (including remuneration and allowances) as the Scottish Ministers may determine,
 - (c) may, by notice to the Scottish Ministers, resign from being eligible to be, or from being, a Panel member,
 - (d) after ceasing to be eligible to serve as a Panel member, may be reappointed as a person eligible to serve as a Panel member.
- (2) A person appointed under paragraph 1(1) ceases to be eligible to serve as, and may not be, a Panel member if the Scottish Ministers are satisfied that the person is unable to discharge the functions of a Panel member or is unsuitable to serve, or to continue to serve, as a Panel member.

Staff, property and services

- 3 The Scottish Ministers may provide the Panel, or ensure that it is provided, with such property, staff and services as they consider necessary or expedient in connection with the exercise of its functions.

Rules of procedure

- 4 (1) The Scottish Ministers may make rules as to the practice and procedure of the Panel.
- (2) Such rules may, in particular, include provision for or in connection with—
- (a) the form and manner in which appeals to the Panel are to be made,
 - (b) the time within which such appeals are to be made,
 - (c) the lodging of documents before the Panel,
 - (d) the notification of matters specified in the rules to OSCR and any appellant,
 - (e) the periods within which proceedings must be held and decided on,
 - (f) the notification of the Panel’s decisions to OSCR and appellants,
 - (g) the time within which a decision of the Panel may be appealed to the Court of Session.

SCHEDULE 3
(introduced by section 75)

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
 - (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).

SCHEDULE 4
(introduced by section 80)

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

Local Government (Financial Provisions etc.) (Scotland) Act 1962 (c.9)

- 1 In section 4 (reduction and remission of rates payable by charitable and other organisations) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962, for paragraph (a) of subsection (10) substitute—
“(a) “charity” means a body entered in the Scottish Charity Register;”.

Civic Government (Scotland) Act 1982 (c.45)

- 2 Section 119 (regulation of charitable collections) of the Civic Government (Scotland) Act 1982 is repealed.

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

- 3 Sections 1 to 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 are repealed.

Charities Act 1992 (c.41)

- 4 In the Charities Act 1992, in Schedule 6, paragraph 10 is repealed.

Local Government etc. (Scotland) Act 1994 (c.39)

- 5 In the Local Government etc. (Scotland) Act 1994, in Schedule 13, paragraph 129(16) is repealed.

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

- 6 In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies), before the entry relating to “The Parole Board for Scotland” insert—
“The Office of the Scottish Charity Regulator”.

Freedom of Information (Scotland) Act 2002 (asp 13)

- 7 In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities), after paragraph 13 insert—
“13A The Office of the Scottish Charity Regulator.”

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

- 8 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (specified authorities), before the entry relating to the “Parole Board for Scotland” insert—
“The Office of the Scottish Charity Regulator”.