

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 1: Charities

Chapter 1 – Office of the Scottish Charity Regulator

6. **Section 1** establishes the Office of the Scottish Charity Regulator (OSCR). Firstly an office (or position) known as the “Office of the Scottish Charity Regulator” is established. A separate body corporate is then established. This is a body with a legal personality, known as “the Scottish Charity Regulator”. This body is then appointed to be the holder of the office that was initially established. Because the charity regulator has already commonly become known as OSCR, this is the term that is used throughout the Act to mean the officeholder.
7. **Section 1** also sets out OSCR’s general functions. These are to determine charitable status, keep a public register of charities, encourage facilitate and monitor compliance with charity legislation, investigate misconduct and take remedial or protective action if necessary and to advise or make proposals to the Scottish Ministers on matters relating to its functions. **Subsection (9)** gives OSCR a duty to have regard, so far as is relevant, to principles which appear to it to be best regulatory practice in performing its functions, particularly principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed.
8. **Schedule 1** deals with the detailed membership and other constitutional arrangements for the Scottish Charity Regulator, with **paragraphs 2 and 3** providing for the Regulator’s members and the chair and deputy being appointed by the Scottish Ministers (after normal public appointment procedures). Certain categories of person are disqualified from being members (e.g. MSPs, MPs, MEPs, office holders of the Scottish Administration or others which may be prescribed by an Order made by the Scottish Ministers). The terms and conditions (including remuneration and allowances) of the Regulator’s members may be determined by the Scottish Ministers. **Paragraph 4** allows the Regulator to appoint a chief executive and other employees, under terms and conditions which require the Scottish Ministers’ approval. Although not covered by the Act, it is intended that OSCR will become a non-Ministerial office holder of the Scottish Administration (i.e. a non-Ministerial department) and that the employees will be civil servants. The formal mechanism for this will be by a section 104 order made by Westminster under the Scotland Act 1998, following enactment of this Act.
9. **Section 2** stipulates that OSCR must prepare and publish an annual report on the exercise of its functions, send a copy to the Scottish Ministers and lay a copy before the Scottish Parliament.