

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 1: Charities

Chapter 10 – Decisions: notices, reviews and appeals

84. **Sections 71 to 78** set out a process by which most decisions by OSCR (or those which are taken on behalf of OSCR) may be challenged by those directly affected in a process that is intended to be simple and more cheaply accessible to charities than the current process which relies on the courts.
85. **Section 71** lists those decisions which must be notified to the individual or charity concerned and which may be reviewed. **Section 72** sets out the persons that must be informed about different decisions. It also provides that notices of decisions must set out the decision, the reasons for the decision and advice about when and how to seek a review. Further definition of a formal notification is given in **section 100**. **Sections 73** sets out the effect of decisions and **74** provides that, if requested by either the person or charity affected by the decision, OSCR must carry out an internal review of the decision. OSCR will publish procedures to set out how the internal reviews will be conducted, although a review is to be carried out within 21 days of receiving the request for it.

Scottish Charity Appeals Panel

86. **Section 75** requires the Scottish Ministers to appoint individuals to serve on a Scottish Charity Appeals Panel, a new tribunal to be set up to provide an independent appeal mechanism for decisions made by OSCR. **Schedule 2** sets out further details of the Appeals Panel. **Schedule 4** adds the Panel to the list of bodies in Part 2, Schedule 1 of the Tribunals and Inquiries Act 1992 and hence the Panel will be under the jurisdiction of the Scottish Committee of the Council for Tribunals. Following open advertising, the Scottish Ministers will appoint individuals to be available to serve on the Panel. The number of Panels will depend on the caseload, but each panel will consist of 3 persons, and the chair at least will have been a solicitor or advocate for at least 5 years. It is intended that administrative support for the panel will be provided by the Executive. The Scottish Ministers will also establish procedural rules for the Panel.
87. Following an internal review of a decision by OSCR, a person who requested the review may (**section 76(1)**) appeal the decision to the Panel, within 28 days of being notified of the review decision. The Panel will consider the appeal and may under **subsection (5)**, either confirm a decision by OSCR, quash OSCR's decision (and direct it to take such other action as the Panel prescribes), or remit the decision to OSCR for reconsideration, with the Panel's reasons. Under **section 77**, if a decision is remitted to it by the Panel, OSCR must, within 14 days, either confirm, vary, reverse or revoke its decision and give its reasons.

Appeals to Court of Session

88. Under **section 78**, either the person requesting an appeal or OSCR may seek to have the appeal considered by the Court of Session. The Court may confirm or quash the decision. A decision by OSCR, or by a person to whom OSCR's functions are delegated by virtue of **section 38**, to suspend a charity trustee, agent or employee (under **section 31(4)**) can be appealed by that person directly to the Court of Session (rather than the Panel).