

# CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON PARTS

#### **Part 2: Fundraising for Benevolent Bodies**

##### **Control of fundraising**

91. **Sections 81 and 82** give benevolent bodies greater control over those fundraising on their behalf. **Section 81** requires professional fundraisers and commercial participators to have an agreement with a benevolent body before fundraising on their behalf. Regulations under **section 83** can set out the requirements of this agreement. Any agreement which does not meet these requirements is only enforceable against the body through the courts. Professional fundraisers and commercial participators are entitled to remuneration or expenses as set out in the agreement.
92. **Section 81** also gives benevolent bodies (and OSCR on behalf of charities) the right to seek an interdict preventing a professional fundraiser or commercial participator fundraising on the body's behalf, if they are doing so without an agreement or outwith an agreement in the prescribed format.
93. **Section 82** allows benevolent bodies to seek an interdict preventing anyone, other than a professional fundraiser or commercial participator (who would be covered by **section 80**), from fundraising on their behalf if they object to the methods of fundraising, if the person is not a fit and proper person to fundraise or if the body does not want to be associated with the venture.
94. **Section 83** provides the Scottish Ministers with powers to regulate fundraising through secondary legislation in a number of ways. This section will be used to make regulations setting out a requirement for professional fundraisers, paid charity fundraisers, commercial participators and possibly volunteers, to make a statement to potential donors regarding their remuneration or the amount of the donation that will go to the benevolent body. Regulations under this section will also cover the form of contract between professional fundraisers or commercial participators and benevolent bodies, as well as circumstances under which donations may be refunded. The Scottish Ministers have agreed to allow the sector time to develop a scheme of self regulation, however, powers under **section 83** may be used to further regulate benevolent fundraising if it was felt necessary.