

# CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON PARTS

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

##### **General**

89. **Part 2** regulates fundraising not just for bodies on the Scottish Charity Register, but for all benevolent bodies and charitable, benevolent and philanthropic purposes. Benevolent bodies are defined as any bodies established for charitable, benevolent or philanthropic purposes, whether they are actually charities or not. This means that many bodies which may have charitable purposes but do not provide a sufficient level of public benefit or may have chosen not to be restricted by the added regulation which falls upon charities, may, for instance, undertake public collections or fundraise (as long as they are transparent and do not claim to be charities).
90. **Section 79** sets out a number of definitions which relate to Part 2. **Section 80** also clarifies that any reference to representation or solicitation in Part 2 refers to any manner of representation, e.g. oral, written or in a statement published in a newspaper, film or radio or television programme.

##### **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.

## **Public benevolent collections**

95. **Sections 84 to 92** set out a local authority led system for licensing public benevolent collections which replaces the provisions for the licensing of public charitable collections under section 119 of the Civic Government (Scotland) Act 1982. The provisions are very similar to those in the 1982 Act. The main changes are the extension of the definition of public benevolent collections in **section 84** to include collections of promises of money (such as direct debits), as well as collections of cash; clarification of the definition of public place under **section 84** and the inclusion of powers under **section 91** to regulate the collections of goods.
96. **Section 85** requires organisers (unless exempted by **subsection (2)**) of public benevolent collections (collections of cash or promises of money in a public place, or from house to house or business to business) to apply to the relevant local authority for permission to collect. Organisers are exempt if they are designated as a designated national collector (under **section 87**), if the collection is in a public meeting, takes place on land occupied by the organiser to which the public have access either by virtue of an enactment or with the implied or express consent of the occupier of the land, or if the collection is by an unattended receptacle in a public place. An organiser of a public benevolent collection held without a local authority consent is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000) (unless the collection satisfies the exemption conditions). **Section 86** requires local authorities to make any necessary enquiries before they either give permission to collect (with or without conditions), or refuse permission on a number of grounds. Local authorities may also withdraw permission already granted. Regulations under **section 86** may remove the duty on local authorities to undertake background checks for certain types of applications.
97. Under **section 87**, OSCR may designate charities who meet certain criteria as designated national collectors. This establishes a regime similar to the current provision under the 1982 Act by which the Scottish Ministers (now OSCR acting on their behalf) may designate bodies collecting in a number of local authority areas as “exempt promoters”. In the new regime, OSCR may specify the criteria to be met for the purposes of obtaining and retaining designated national collector status, and are required to consult certain persons beforehand. Collections by designated national collectors must be notified to the relevant local authority, who may prohibit the collection if it is likely to cause undue public inconvenience.
98. **Section 88** sets out a process for organisers of public benevolent collections to appeal against a local authority decision. Further procedures for public benevolent collections will be set out in regulations made under **section 90**.
99. **Section 89** gives OSCR powers to protect funds raised in a public charitable collection and **section 92** requires local authorities to consider guidance issued by OSCR in relation to public benevolent collections.
100. **Section 91** allows the Scottish Ministers to regulate the collections of goods from the public for charitable, benevolent or philanthropic purposes through secondary legislation. These regulations could include a requirement to notify local authorities about the collection, and can create offences for non-compliance.