

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 4: General and Supplementary

Ancillary provisions

116. **Paragraph (a) of section 102** allows the Scottish Ministers to modify any enactment in order to ensure a body established by an enactment is able to meet the charity test in either, or both, of **sections 7(3) (a) or (b)** of the Act. This provision may be used if it were to be decided that an existing charitable non-departmental public body (NDPB) should remain a charity but was prevented from doing so by an enactment providing the Scottish Ministers with powers to control the distribution of the body's assets or control of the body via a power of direction. Modifying the enactment would then ensure the body could comply with these sections of this Act.
117. **Paragraph (b) of section 102** provides ancillary powers for the Scottish Ministers to make other incidental, supplemental, consequential, transitional, transitory or saving provisions considered necessary for this Act.
118. **Section 103** sets out the procedures for the Scottish Ministers to make orders, regulations or rules by statutory instrument under the Act. Instruments are generally made by negative resolution, except orders under **section 7(5)**, **section 19(8)** and those under **section 102** which add to, replace or omit any part of the text of primary legislation, regulations under **sections 64(d)**, **83(1)** and commencement orders under **section 107(2)**. These exceptions are subject to affirmative resolution in the Parliament.
119. **Section 104** relates to **schedule 4** which contains minor and consequential amendments to other primary legislation in consequence of this Act. **Schedule 4** includes amendments to several Acts: