

# CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON PARTS

#### Part 1: Acts

- **Paragraph 1 of Schedule 4** amends section 6(2) of the Recreational Charities Act 1958 by deleting the references to the Local Government (Financial Provisions etc) (Scotland) Act 1962. Section 6(2) of the 1958 Act extends part of the 1958 Act to those Scottish enactments which require “charity” to be interpreted in accordance with the law of England & Wales for tax purposes and it states that one of these enactments is the Local Government (Financial Provisions etc) (Scotland) Act 1962. However, **paragraph 2** also amends the 1962 Act to ensure that “charity” is to be interpreted in accordance with the new Scottish charity test rather than in accordance with the law of England & Wales. Therefore the references to the 1962 Act in the 1958 Act are now unnecessary;
- Paragraph 2 which amends section 4(10)(a) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962 to refer to charities entered in the Scottish Charity Register to ensure that all charities on the Scottish Charity Register are eligible to receive the appropriate reduction or remission of non-domestic rates. Paragraph 5 of schedule 2 of the 1962 Act is also repealed by this paragraph to remove the cross reference to the Recreational Charities Act 1958, as bodies previously recognised as Scottish charities under that Act will in future be expected to qualify as charities (and be eligible for rates relief) under the charitable purpose in **section 7(2)(i)** of this Act.
- **Paragraph 3** which adds references to charities on the Scottish Charity Register to the Sex Discrimination Act 1975 to ensure that Act will continue to apply to charitable educational endowments following enactment of this Act;
- **Paragraph 4** which replaces the existing definition of “charitable purposes” in section 122 of the Education (Scotland) Act 1980, referring instead to this Act;
- **Paragraph 5** which replaces previous references to “Scottish Charities” and “charitable” referring instead to this Act and repeals the previous provisions on the regulation of charitable collections in section 119 of the Civic Government (Scotland) Act 1992 relating to public charitable collections;
- **Paragraph 6** disapplies section 380 of the Companies Act 1985 in relation to the resolutions for conversion to a SCIO by a Scottish charitable company. This stops the company having to send these resolutions to Companies House before OSCR has decided whether or not to accept the application to convert;
- **Paragraph 7** which repeals the existing link in the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 between the recognition by the Inland Revenue of bodies eligible for tax relief and bodies eligible to describe themselves as Scottish Charities, and existing provisions on the regulation of Scottish Charities by the Scottish Ministers;

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- **Paragraph 8** which repeals an amendment which was made to section 119 of the Civic Government (Scotland) Act 1982 by the Charities Act 1992. Section 119 on the regulation of charitable collections is superseded by this Act;
- **Paragraph 9** which updates section 19(3) of the Further and Higher Education (Scotland) Act 1992 to refer to charities as defined in this Act instead of the Income Tax Acts. This section allows the Scottish Ministers to make modifications, by order, to the purposes and conditions of application for educational endowments ;
- Paragraph 10 which brings the Scottish Charity Appeals Panel within the jurisdiction of the Scottish Committee of the Council on Tribunals;
- **Paragraph 11** which repeals an amendment which was made to section 119 of the Civic Government (Scotland) Act 1982 by the Local Government etc. (Scotland) Act 1994. This updated section 119 on the regulation of charitable collections bringing it into line with the 1994 local government reorganisations);
- **Paragraph 12** which applies the provisions of the Ethical Standards in Public Life etc. (Scotland) Act 2000 to the Scottish Charity Regulator;
- **Paragraph 13** which updates sections 34(8) and 71(8) of the Land Reform (Scotland ) Act 2003 to refer to a charity as defined in this Act instead of as in the Law Reform (Miscellaneous Provisions (Scotland) Act 1990;
- **Paragraph 14** which applies the Public Appointments and Public Bodies etc. (Scotland) Act 2003 to the Scottish Charity Regulator, ensuring that members of the Scottish Charity Regulator are appointed in accordance with the public appointments process overseen by the Commissioner for Public Appointments in Scotland;
- **Paragraph 15** which updates paragraph 12 of schedule 2 to the Protection of Children (Scotland) Act 2003 to refer to a charity as defined in this Act instead of as in the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

### **General interpretation**

120. **Section 106** provides a number of general definitions of terms used throughout the Act. Reference has been made to these in the relevant sections of the commentary above.

### **Short title and commencement**

121. **Section 107(1)** provides for the short title to the Act. **Subsection (2)** provides that only **sections 102, 103** and this section come into force when the Act receives Royal Assent. The remaining provisions of the Act will come into force on a date (or dates) appointed by the Scottish Ministers by means of a commencement order or orders.

### **Parliamentary History**

122. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, the references to the Official Report of those proceedings and the dates on which Committee Reports and other papers relating to the Bill were published, and references to those Reports and other papers.

#### **PARLIAMENTARY HISTORY**

##### **Charities and Trustee Investment (Scotland) Act 2005 (asp10)**

<i>Proceedings and Reports</i>	<i>Reference</i>
<b>Introduction</b>	
15 November 2004	Bill as introduced (SP Bill 32)
<b>Stage 1</b>	

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<b><i>Proceedings and Reports</i></b>	<b><i>Reference</i></b>
<b><i>a) Communities Committee</i></b>	
29th Meeting, 1 December 2004	In Private
30th Meeting, 8 December 2004	cols 1473 - 1496
31st Meeting, 15 December 2004	cols 1499 - 1556
1st Meeting, 12 January 2005	cols 1558 - 1608
2nd Meeting, 19 January 2005	cols 1610 - 1650
3rd Meeting, 26 January 2005	cols 1651 - 1700
4th Meeting, 2 February 2005	cols 1702 - 1744
5th Meeting, 9 February 2005	In Private
6th Meeting, 23 February 2005	In Private
1st Report, 2005 (Session 2)	Stage 1 Report on the Charities and Trustee Investment (Scotland) Bill (SP Paper 301)
<b><i>b) Finance Committee</i></b>	
34th Meeting, 21 December 2004	cols 2139 - 2156
nd Meeting, 18 January 2005	cols 2183 - 2227
3rd Meeting, 25 January 2005	In Private
4th Meeting, 1 February 2005	In Private
Report to Communities Committee, 2 February 2005	Report on Charities and Trustee Investment (Scotland) Bill
<b><i>c) Subordinate Legislation Committee</i></b>	
4th Meeting, 1 February 2005	cols 782 - 785
5th Meeting, 8 February 2005	cols 835 - 839
<b><i>d) Consideration by the Parliament</i></b>	
Stage 1 debate, 9 March 2005	cols -15095 – 15148
<b>Stage 2</b>	
<b><i>a) Communities Committee</i></b>	
12th Meeting, 20 April 2005	cols 2045 - 2092
13th Meeting, 27 April 2005	cols 2094 - 2136
14th Meeting, 4 May 2005	cols 2137 - 2170
Bill as amended at Stage 2	Bill as amended (SP Bill 32A)
<b><i>c) Subordinate Legislation Committee</i></b>	
19th Meeting, 7 June 2005	cols -1082 – 1086
23rd Report, 8 June 2005	Report on the Charities and Trustee Investment (Scotland) Bill (SP375)
<b>Stage 3</b>	
<b><i>Consideration by the Parliament</i></b>	
Stage 3 debate, 9 June 2005	cols 17820 - 17888

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<b><i>Proceedings and Reports</i></b>	<b><i>Reference</i></b>
Bill passed, 9 June 2005	Bill as passed (SP Bill 32B)
<b>Royal Assent</b>	
14 July 2005	<a href="#">Charities and Trustee Investment (Scotland) Act 2005 (asp10)</a>