

# CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON PARTS

#### Part 1: Charities

#### *Chapter 3 – Co-operation and information*

##### Co-operation

33. **Section 20** provides a statutory duty for OSCR to seek to secure co-operation with other relevant regulators, which are defined in **subsection 2** as public bodies or office-holders with functions that are similar to those of OSCR, or conferred on them to allow them to regulate persons for other purposes. This provision is intended to ensure that where possible the burden of dual or multiple regulation on the same body by several regulators is minimised.
34. **Subsection (3)** requires OSCR and any other regulator which has been authorised (under section 38(2)) to carry out OSCR's functions to co-operate with each other so far as is consistent with their proper functions.
35. **Subsection (4)** emphasises that there is no requirement for either party co-operating in relation to this section to share information with anyone that they are prevented from disclosing by any other law. Hence no information that is restricted from disclosure by the Data Protection Act may be disclosed by one regulator to another.

##### Public access to Register

36. **Section 21** requires OSCR to make the Scottish Charity Register available for public inspection. It is expected that OSCR will use its web-site to make the register widely and freely available and to publicise its arrangements, but it will also be available, free, at the OSCR principal offices and otherwise as it thinks fit. This may, for instance, mean providing information from the register in Braille, large-print or other medium as requested. OSCR may also charge a fee, limited to the cost of supply, for preparing information if this is provided by alternative means or in other places.

##### Power of OSCR to obtain documents and information

37. Under **section 22** OSCR may require, by notice, any charity to provide it with documents or information which it requires for the charity register, unless the charity would be entitled to refuse on the grounds of confidentiality in the Court of Session.

##### Entitlement to be given information by charities

38. Under **section 23** a charity must provide to any person who makes a reasonable request, a copy of its constitution or latest statement of accounts (in what ever reasonable format that it is requested). The charity may charge a fee, limited to the lesser of the

cost of supply or a maximum fee that the Scottish Ministers may set out in an order. However, the Scottish Ministers may make an order that exempts charities from this duty (**section 23(3)**).

### **Sharing information**

39. **Section 24** sets out provisions to allow OSCR to disclose information to other public bodies or officeholders (e.g. regulators) and for them to disclose information to OSCR for purposes connected with their functions. **Subsection (1)** permits OSCR to disclose information to any public body or office holder. **Subsections (2) and (3)** allow several Scottish public bodies to disclose information to OSCR to assist it in its functions. **Subsection 4** provides that such disclosures are subject to any obligations as to secrecy or other restriction on disclosure of information however imposed.
40. **Section 25** allows the Scottish Ministers to designate any public body or officeholder, whether in Scotland or not, such that OSCR may provide information to them (**subsection (3)(a)**) or may designate any Scottish public authority to allow it disclose information to OSCR (**subsection (3)(b)**), without any obligation as to secrecy or other restriction on disclosure of information. This section also removes restrictions on disclosing information to OSCR by a charity trustee, independent examiner or auditor of a charity's accounts. Under **section 26**, it is an offence (with a penalty set at level 5 (currently £5000) or imprisonment up to 6 months on summary conviction) to provide false or misleading information to OSCR knowingly or to alter, conceal or destroy it deliberately.