

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 1: Charities

Chapter 6 – Charity accounts

Accounts

59. As under current legislation (sections 4 and 5 of the 1990 Act), **section 44** requires all charities to keep proper accounting records. Charities must also prepare an annual statement of account and report on their activities, have these audited or independently examined (depending on the size of the charity as set out in regulations made under **subsection 44(4)**) and provide a copy of the statement to OSCR. Accounting records must be retained for at least 6 years. It is expected that the standard of accounts set out in regulations will accord closely with the UK Statement of Recommended Practice for Charities an updated version of which has recently been adopted on behalf of the Accounting Standards Board.
60. The regulations on accounting will also be used to set out different requirements for different classes or type of charities. For instance, religious bodies may, as now, be allowed to prepare accounts in a slightly different format, as long as they meet equivalent standards to other charities. Regulations will also set out the thresholds by which different sizes of charity (probably judged on the value of its income, turnover or other measure) must prepare different levels of detail in their accounts and undergo different levels of audit or examination.

Failure to provide statement of account

61. **Section 45** provides that OSCR may appoint someone to prepare a statement of accounts for a charity that fails to send a copy to OSCR within the period prescribed in accounting regulations. The appointed person has powers of entry to the charity's premises, access to financial documents and can demand information from charity trustees or employees. Costs of OSCR and the appointed persons may be charged to the charity trustees. **Subsection (6)** also provides that failure to comply with an appointed person's requirements is an offence with a liability for a fine of level 3 (currently £1000) on the standard scale.

Duty of auditors etc. to report matters to OSCR

62. **Section 46** provides a new duty for persons appointed to carry out an independent audit or examination of a charity's statement of account to report (in writing) immediately to OSCR any matter which they have reasonable cause to believe is likely to be of a material significance for its functions to make inquiries and take regulator action. This duty also relates to persons similarly appointed for a charity which is a company

and therefore covers auditors, independent examiners and reporting accountants of all charities. **Subsection (3)** also provides a right for auditors etc. to report any matter (whether significant or not) to OSCR if the person believes that matter is likely to be relevant for any of OSCR's functions. This section therefore removes any restrictions on auditors etc. from reporting matters to OSCR and makes it a duty to report if they become aware of matters of material significance to OSCR in exercising its inquiry functions. The provisions to report matters also covers those relating to any institution or body corporate "connected" to the charity being examined. **Subsection (5)** defines that "connected" in this instance means a body being either controlled by or in which the charity has a substantial interest. **Section 105** sets out when a charity or person is considered to have control of another body (e.g. a trading arm of a charity).

Dormant accounts of charities

63. **Sections 47 and 48** provide a revised regime to that set out in existing legislation (section 12 of the 1990 Act). This provides a means by which OSCR can redistribute sums of money held in charity bank accounts that have not been used for several years, so that these sums may be used for similar charitable purposes. A dormant account is defined (in **section 48(2)**) as one held in a bank and for which no payments or transactions have occurred for 5 years except a payment into the account or a transaction by the bank itself (e.g. payment of interest or bank charges). OSCR must be satisfied that the body in whose name the account has been held is a charity or was a Scottish Charity under the previous charity legislation before this Act was enacted. OSCR is also to make reasonable enquiries to try to locate a person concerned with the management or control of the body holding the dormant account before redistributing any funds. OSCR must transfer the credit in the dormant account (less any expenses etc. in compliance with regulations to be made by the Scottish Ministers under **section 48(1)**) to either a charity with similar purposes, or another charity that OSCR chooses, if it cannot tell what the purposes of the original charity were. **Section 106** includes a definition of "relevant financial institution" such that the deposit banks holding dormant accounts under consideration are those defined by the Financial Services and Markets Act 2000. It is intended that a section 104 order under the Scotland Act will be made following enactment of this Act to ensure that this definition is automatically updated as new banks become defined in that Westminster legislation.