

This document has been prepared as a “Keeling schedule” to set out the amendments to be made to the **Charities and Trustee Investment (Scotland) Act 2005** (“the 2005 Act”) by the **Charities (Regulation and Administration) (Scotland) Bill** (“the Bill”).

It is provided to assist in the Parliament’s Stage 1 scrutiny of the Bill. It will not reflect any amendments agreed to by the lead committee at Stage 2 or by the Parliament at Stage 3.

Although every effort has been made to ensure the accuracy of the information, it is provided for illustrative purposes only. In addition, it should be noted that not all of the provisions of the 2005 Act are included. Only Part 1 of the 2005 Act, and any sections in Part 4 which are being amended, are shown.

Insertions proposed by the Bill are shown in **red**.
Deletions proposed by the Bill are shown in ~~blue and strikethrough~~.

Charities and Trustee Investment (Scotland) Act 2005 **(as prospectively amended by the Bill)**

PART 1

CHARITIES

CHAPTER 1

OFFICE OF THE SCOTTISH CHARITY REGULATOR

1 Office of the Scottish Charity Regulator

- (1) There is to be an office to be known as the Office of the Scottish Charity Regulator.
- (2) There is established a body corporate, to be known as the Scottish Charity Regulator, which is to be the holder of that office.
- (3) That office-holder is referred to in this Act as “OSCR”.
- (4) OSCR has the functions conferred on it by or under this Act and any other enactment.
- (5) OSCR's general functions are—
 - (a) to determine whether bodies are charities,
 - (b) to keep a public register of charities,
 - (c) to encourage, facilitate and monitor compliance by charities with the provisions of this Act,
 - (d) to identify and investigate apparent misconduct in the administration of charities and to take remedial or protective action in relation to such misconduct, and
 - (e) to give information or advice, or to make proposals, to the Scottish Ministers on matters relating to OSCR's functions.
- (6) OSCR may do anything (whether in Scotland or elsewhere) which is calculated to facilitate, or is conducive or incidental to, the performance of its functions.

- (7) Subsection (6) does not enable OSCR to do anything in contravention of any express prohibition, restriction or limitation on its powers which is contained in any enactment (including this Act).
- (8) OSCR must perform its functions in a manner that encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (9) In performing its functions OSCR must, so far as relevant, have regard to—
 - (a) the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed, and
 - (b) any other principle appearing to OSCR to represent best regulatory practice.
- (10) Schedule 1 makes further provision about the Scottish Charity Regulator.

2 Annual reports

- (1) As soon as practicable after the end of each financial year, OSCR must—
 - (a) prepare and publish a general report on the exercise of its functions during that year,
 - (b) send a copy of the report to the Scottish Ministers, and
 - (c) lay a copy of the report before the Scottish Parliament.
- (2) A general report may include, in particular, any general recommendations which OSCR may have arising from the exercise of its functions during that year and any previous financial year.
- (3) It is for OSCR to determine the form and content of a general report and by what means it is to be published.

CHAPTER 2

SCOTTISH CHARITY REGISTER

The Register

3 Scottish Charity Register

- (1) OSCR must keep a register of charities to be known as the “Scottish Charity Register” (and referred to in this Act as “the Register”).
- (2) The Register is to be kept in such manner as OSCR thinks fit.
- (3) The Register must contain a separate entry for each charity entered in it setting out—
 - (a) the name of the charity,
 - (aa) the name of each of its charity trustees,
 - (b) the principal office of the charity or, where it does not have such an office, the name and address of one of its charity trustees,
 - (c) the purposes of the charity,
 - (d) where the charity is a designated religious charity or a designated national collector, that fact,
 - (e) where—

- (i) a direction is given under section 11(3), 12(2), ~~(2A)~~ or (3), 16(6), 28(3), 30(1), ~~30A(2), 30B(2)~~ or 31(5) to (9), or
 - (ii) a notice is given under section 31(4) ~~or 45A(2)~~,
- in relation to the charity, the fact that the direction or notice has been given and the date on which it was given,
- (f) any other information in relation to the charity which the Scottish Ministers by regulations require to be set out in the Register, and
 - (g) any other information in relation to the charity which OSCR considers appropriate.
- ~~(4) OSCR must, despite subsection (3)(b), exclude the information specified in that provision from a charity's entry in the Register if, on the application of the charity (whether together with its application for entry in the Register or separately), OSCR is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.~~
- (4) Despite subsection (3)(aa) and (b), OSCR—
- (a) may, of its own accord, exclude any information of the type specified in those provisions from a particular charity's or type of charity's entry in the Register if the relevant threshold is met in respect of the information, and
 - (b) must exclude any information of the type specified in those provisions—
 - (i) which is the subject of an application for exclusion (whether as part of the application for the entry of a body in the Register or, subsequently, by a charity or any of its charity trustees), and
 - (ii) in respect of which the relevant threshold is met.
- (4A) For the purposes of subsection (4), the relevant threshold is met in respect of information where OSCR is satisfied that the information would, if included in the entry, be likely to jeopardise the safety or security of any person or premises.
- (5) OSCR must, if it is satisfied that a direction or notice of a type described in subsection (3)(e) has been complied with or no longer has effect, remove reference to the direction or notice from the charity's entry.
 - (6) OSCR ~~must~~—
 - (a) ~~may~~, from time to time, review ~~each~~ any entry in the Register, ~~and~~
 - (b) ~~must~~, if it considers any information set out in a charity's entry to be inaccurate—
 - (i) amend the entry accordingly, and
 - (ii) notify the charity of the amendment made, ~~and~~
 - (c) ~~must~~, if an entry is in respect of a body which has ceased to exist, remove the entry.

Applications

4 Application for entry in Register

An application for entry in the Register must—

- (a) state the name of the body making the application (the “applicant”),
- (b) state the principal office of the applicant or, where it does not have such an office, the name and address of one of the persons who, if the applicant is entered in the Register, will be its charity trustees,

- (c) be accompanied by—
 - (i) a statement of the applicant's purposes,
 - (ii) a copy of the applicant's constitution, and
 - (iii) the applicant's most recent statement of account (if any) **and any associated reports forming part of the same document**, and
- (d) contain such other information, and be accompanied by such other documents, as may be—
 - (i) required by regulations under section 6(1), or
 - (ii) otherwise requested by OSCR.

5 Determination of applications

- (1) OSCR may enter an applicant in the Register only if it considers that the applicant meets the charity test.
- (2) OSCR must refuse to enter an applicant if—
 - (a) it considers that the applicant's name falls within section 10,
 - (aa) **it considers that it would not be appropriate for it to regulate the applicant because the applicant has or will have no or negligible connection to Scotland, or**
 - (b) the application must, by virtue of regulations under section 6(1), be refused,
 but must not otherwise refuse to enter an applicant which it considers meets the charity test.
- (3) **Despite subsection (2)(a), where—**
 - (a) **an applicant's name falls within section 10 only because it is the same as, or too like, the name of a charity, and**
 - (b) **the application for entry in the Register is being made as part of a proposed charity merger (within the meaning of section 64A(2)) involving that charity,****OSCR is entitled, but not required, to refuse to enter the applicant on the grounds of the applicant's name.**
- (4) For the purpose of subsection (2)(aa), in considering, in all the circumstances, what connection (if any) the applicant has or will have to Scotland, OSCR must have regard to the following factors—
 - (a) **whether the applicant has (or intends to have) a principal office in Scotland,**
 - (b) **whether the applicant occupies (or intends to occupy) any land or premises in Scotland,**
 - (c) **whether the applicant carries out (or intends to carry out) activities in any office, shop or similar premises in Scotland.**
 - (d) **whether the applicant is established under the law of Scotland,**
 - (e) **whether any of the persons who are (or are to be) concerned in the management or control of the applicant are resident in Scotland,**
 - (f) **any other relevant factor.**
- (5) **The Scottish Ministers may by regulations modify this section to make provision about the factors which are or are not relevant for the purpose of subsection (2)(aa).**

6 Applications: further procedure

- (1) The Scottish Ministers may by regulations make such further provision in relation to the procedure for applying and determining applications for entry in the Register (including applications under section 54(1), 56(1) and 59(1)) as they think fit.
- (2) Such regulations may in particular make provision about—
 - (a) information and documents which must be specified in or accompany an application,
 - (b) the form and manner in which applications must be made,
 - (c) the period within which OSCR must make a decision on an application, and
 - (d) circumstances in which OSCR must refuse to enter a body in the Register.

The charity test

7 The charity test

- (1) A body meets the charity test if—
 - (a) its purposes consist only of one or more of the charitable purposes, and
 - (b) it provides (or, in the case of an applicant, provides or intends to provide) public benefit in Scotland or elsewhere.
- (2) The charitable purposes are—
 - (a) the prevention or relief of poverty,
 - (b) the advancement of education,
 - (c) the advancement of religion,
 - (d) the advancement of health,
 - (e) the saving of lives,
 - (f) the advancement of citizenship or community development,
 - (g) the advancement of the arts, heritage, culture or science,
 - (h) the advancement of public participation in sport,
 - (i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended,
 - (j) the advancement of human rights, conflict resolution or reconciliation,
 - (k) the promotion of religious or racial harmony,
 - (l) the promotion of equality and diversity,
 - (m) the advancement of environmental protection or improvement,
 - (n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage,
 - (o) the advancement of animal welfare,
 - (p) any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.

- (3) In subsection (2)—
- (a) in paragraph (d), “the advancement of health” includes the prevention or relief of sickness, disease or human suffering,
 - (b) paragraph (f) includes—
 - (i) rural or urban regeneration, and
 - (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities,
 - (c) in paragraph (h), “sport” means sport which involves physical skill and exertion,
 - (d) paragraph (i) applies only in relation to recreational facilities or activities which are—
 - (i) primarily intended for persons who have need of them by reason of their age, ill-health, disability, financial hardship or other disadvantage, or
 - (ii) available to members of the public at large or to male or female members of the public at large,
 - (e) paragraph (n) includes relief given by the provision of accommodation or care, and
 - (f) for the purposes of paragraph (p), the advancement of any philosophical belief (whether or not involving belief in a god) is analogous to the purpose set out in paragraph (c).
- (4) A body which falls within paragraphs (a) and (b) of subsection (1) does not, despite that subsection, meet the charity test if—
- (a) its constitution allows it to distribute or otherwise apply any of its property (on being wound up or at any other time) for a purpose which is not a charitable purpose,
 - (b) its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities, or
 - (c) it is, or one of its purposes is to advance, a political party.
- (5) The Scottish Ministers may by order disapply either or both of paragraphs (a) and (b) of subsection (4) in relation to any body or type of body specified in the order.

8 Public benefit

- (1) No particular purpose is, for the purposes of establishing whether the charity test has been met, to be presumed to be for the public benefit.
- (2) In determining whether a body provides or intends to provide public benefit, regard must be had to—
 - (a) how any—
 - (i) benefit gained or likely to be gained by members of the body or any other persons (other than as members of the public), and
 - (ii) disbenefit incurred or likely to be incurred by the public,
 in consequence of the body exercising its functions compares with the benefit gained or likely to be gained by the public in that consequence, and
 - (b) where benefit is, or is likely to be, provided to a section of the public only, whether any condition on obtaining that benefit (including any charge or fee) is unduly restrictive.

9 Guidance on charity test

OSCR must, after consulting representatives of the charitable sector and such other persons as it thinks fit, issue guidance on how it determines whether a body meets the charity test.

Charity names

10 Objectionable names

- (1) A body's name falls within this section if it is—
 - (a) the same as, or too like, the name **or working name** of a charity,
 - (b) likely to mislead the public as to the true nature of the purposes of the body or of the activities which it carries on, or intends to carry on, in pursuit of those purposes,
 - (c) likely to give the impression that the body is connected in some way to the Scottish Administration, Her Majesty's Government in the United Kingdom or any local authority, or with any other person, when it is not so connected, or
 - (d) offensive.
- (2) The reference in subsection (1)(b) to a body's purposes are—
 - (a) in the case of an applicant, the purposes set out in the statement accompanying its application,
 - (b) in the case of a charity, the purposes set out in its entry in the Register, and
 - (c) in the case of an SCIO proposed in an application under section 54(1), 56(1) or 59(1), the purposes set out in the SCIO's proposed constitution accompanying the application.
- (3) **Nothing in this section, or in any of sections 5(2)(a), 11(4), 12(3) 54(4)(a) or 57(3)(a), requires OSCR to undertake any investigation into the working name of a charity.**

11 Change of name

- (1) A charity may change its name only with OSCR's consent.
- (2) A charity which proposes to change its name must, not less than 42 days before doing so, give notice to OSCR specifying its proposed new name.
- (3) Unless OSCR, within 28 days of the date on which a notice is given under subsection (2); ~~directs the charity not to change its name;~~
 - (a) **refuses its consent, or**
 - (b) **directs the charity not to change its name to that proposed new name for a period of not more than 6 months specified in the direction,**

OSCR is to be taken as having given its consent.

- (3A) **A direction under subsection (3)(b)—**
 - (a) **may be revoked at any time,**
 - (b) **may be varied, but not so as to have effect for a period of more than 6 months from the date on which it is given.**
- (3B) **Where OSCR gives such a direction it must, after making such inquiries as it thinks fit—**

- (a) give its consent, whether or not subject to conditions, or
 - (b) refuse its consent.
- (4) OSCR may refuse to consent to a charity changing its name only where—
- (a) it considers that the proposed new name falls within section 10, or
 - (b) it is unable, after making reasonable inquiries, to satisfy itself that the proposed new name does not fall within section 10.
- (5) OSCR may, at the request of a charity, grant consent to a different proposed new name than that specified by the charity in the notice given by it under subsection (2).
- (6) Where consent to a new name is granted by virtue of subsection (5), the charity is deemed for the purpose of the minimum notice period provided for in subsection (2) to have sought consent to that new name on the day that it gave the notice under subsection (2).

12 ~~Power of OSCR to require charity to change name~~

Power of OSCR in relation to charity names and working names

- (1) A charity may, if it considers that the name ~~of another charity is too like its name, request OSCR to review the names.~~ or working name of another charity is the same as or too like its name or working name, request OSCR to conduct a review.
- (2) OSCR must, if satisfied following such a review that the names of two charities are too alike, direct either one or both of the charities to change its name.
- (2A) OSCR may, if satisfied following such a review that the working name of a charity (“charity A”) is the same as or too like the name or working name of another charity (“charity B”), as appropriate—
- (a) direct charity B to change its name,
 - (b) direct either one or both of the charities to stop using its working name within such period as may be specified in the direction.
- ~~(3) OSCR must, where at any other time it considers that a charity's name falls within section 10, direct the charity to change its name.~~
- (3) At any other time—
- (a) where OSCR considers that a charity's name falls within section 10, it must direct the charity to change its name,
 - (b) where OSCR considers that a charity's working name is objectionable, it may direct the charity to stop using that working name within such period as may be specified in the direction.
- (3A) But, for the purposes of subsection (3)(a), where—
- (a) a charity's name falls within section 10 only because it is the same as, or too like, the name of another charity, and
 - (b) one of the charities was entered in the Register with that name by virtue of section 5(3),

OSCR may direct either one or both of the charities to change its name under subsection (3)(a) only if OSCR is satisfied that it is no longer appropriate for the names to be the same or so alike.

- (3B) A direction under this section—

- (a) may be revoked at any time,
 - (b) may be varied, but only by extending the period specified in it.
- (4) Section 11 applies in relation to a change of name in compliance with a direction under this section **to change name** (and the charity directed must give notice of its proposed new name under subsection (2) of that section within such period as may be specified in the direction).
 - (5) OSCR must remove from the Register any charity which fails to comply with a direction **to change name** under this section.
 - (6) **For the purposes of subsection (3)(b), a charity’s working name is objectionable where it would, if it were the charity’s name, fall within section 10(1).**

References to charitable status

13 References to charitable status

- (1) A body entered in the Register may refer to itself as a “charity”, a “charitable body”, a “registered charity” or a “charity registered in Scotland”.
- (2) If such a body is established under the law of Scotland, or is managed or controlled wholly or mainly in or from Scotland, it may also refer to itself as a “Scottish charity” or a “registered Scottish charity”.
- (3) A body which refers to itself in any of the ways described in subsection (1) is to be treated as representing itself as a body entered in the Register.
- (4) A body which refers to itself in any of the ways described in subsection (2) is to be treated as representing itself—
 - (a) as a body entered in the Register, and
 - (b) as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland.

14 Exception for certain bodies not in Register

A body which is not entered in the Register may, despite section 13, refer to itself as a “charity” without being treated as representing itself as a charity if, and only if—

- (a) it is—
 - (i) established under the law of a country or territory other than Scotland,
 - (ii) entitled to refer to itself as a “charity” (by any means or in any language) in that country or territory, and
 - (iii) managed or controlled wholly or mainly outwith Scotland,
- (b) it does not—
 - (i) occupy any land or premises in Scotland, or
 - (ii) carry out activities in any office, shop or similar premises in Scotland, and
- (c) in making that reference, it also refers to being established under the law of a country or territory other than Scotland.

15 References in documents

- (1) The Scottish Ministers may by regulations require each body entered in the Register to state, in legible characters—
 - (a) that it is a charity,
 - (b) such other information as may be specified in the regulations,on such documents issued or signed on behalf of the charity as may be so specified.
- (2) Such regulations may—
 - (a) exempt charities, or charities of a particular type, from any of the requirements imposed by the regulations,
 - (b) provide that any statement required by them may, in the case of documents which are otherwise wholly or mainly in a language other than English, be made in that other language.
- (3) For the purposes of this section, a reference to a document issued or signed on behalf of the charity includes a reference to a web page on a website operated by or on behalf of the charity.

Changes

16 Changes which require OSCR's consent

- (1) A charity may take any action set out in subsection (2) only with OSCR's consent and in accordance with any conditions attached to any such consent.
- (2) Those actions are—
 - (a) amending its constitution so far as it relates to its purposes,
 - (b) amalgamating with another body,
 - (c) winding itself up or dissolving itself,
 - (d) applying to the court in relation to any action set out in paragraphs (a) to (c).
- (3) Subsection (1) does not apply in relation to any action—
 - (a) in pursuance of an approved reorganisation scheme, or
 - (b) for which OSCR's consent is required by virtue of any other enactment.
- (4) Where a charity proposes to take any action set out in subsection (2) it must, not less than 42 days before the date on which the action is to be taken, give notice to OSCR of the proposal specifying that date (unless the action is one for which, by virtue of subsection (3), consent under subsection (1) is not required).
- (5) In the case of an action set out in subsection (2)(a), the charity must not proceed unless and until OSCR has given its consent.
- (6) In any other case, unless OSCR, within 28 days of the date on which notice is given under subsection (4)—
 - (a) refuses its consent, or
 - (b) directs the charity not to take the action for a period of not more than 6 months specified in the direction,OSCR is to be taken as having consented to it.

- (7) A direction under subsection (6)(b)—
 - (a) may be revoked at any time,
 - (b) may be varied, but not so as to have effect for a period of more than 6 months from the date on which it is given.
- (8) Where OSCRC gives such a direction it must, after making such inquiries as it thinks fit—
 - (a) give its consent, whether or not subject to conditions, or
 - (b) refuse its consent.

17 Notification of other changes

- (1) A charity must give OSCRC notice of—
 - (a) any change in—
 - (i) the principal office of the charity, or
 - (ii) where it does not have such an office, the name or address ~~of the charity trustee specified in the Register~~ specified in the Register in accordance with section 3(3)(b) (or which would, but for section 3(4), be so specified),
 - (b) any change in any other details set out in its entry in the Register (or which would, but for section 3(4), be so specified),
 - (ba) any change in relation to its charity trustees which alters the answer to a question specified by OSCRC under section 66A(3),
 - (c) any change to its constitution,
 - (d) any action set out in section 16(2)(b) to (d) which the charity has taken,
 - (e) any administration order or an order for winding up made by the court in respect of the charity,
 - (f) the appointment of a receiver in respect of any of the charity's property,
 setting out the date on which the change, action, order or appointment took effect.
- ~~(2) Subsection (1) does not apply in relation to any action which requires OSCRC's consent under section 16.~~
- (2) Paragraphs (c) and (d) of subsection (1) are subject to section 16.
- (3) A notice under any of paragraphs (a) to (d) of subsection (1) must be given within 3 months of the date of the change or action to which it relates.
- (4) A notice under paragraph (e) or (f) of subsection (1) must be given within 1 month of the date of the order or appointment to which it relates.

Removal from Register

18 Removal from Register

OSCR must, within 28 days of the date on which it receives an application from a charity for removal from the Register—

- (a) remove the charity from the Register, and
- (b) give it notice of the date on which it is removed.

19 Removal from Register: protection of assets

- ~~(1) A body removed from the Register (under section 18 or otherwise) continues to be under a duty to apply—~~
- ~~(a) any property previously acquired, or any property representing property previously acquired,~~
 - ~~(b) any property representing income which has previously accrued, and~~
 - ~~(c) the income from any such property,~~
- ~~in accordance with its purposes as set out in its entry in the Register immediately before its removal.~~
- (1) A body removed from the Register (under section 18 or otherwise) continues to be under a duty to apply its protected charitable assets—
- (a) in accordance with its charitable purposes as set out in its entry in the Register immediately before its removal (its “most recent purposes”), and
 - (b) to provide public benefit in Scotland or elsewhere.
- (1A) In this section, “protected charitable assets” means—
- (a) any property acquired, or any property representing property acquired, before the body was removed from the Register,
 - (b) any property representing income which accrued before the body was removed from the Register, and
 - (c) the income from any such property.
- (1B) The application of protected charitable assets in accordance with a body’s most recent purposes is not to be presumed to be for the public benefit.
- (1C) In determining whether a body is applying its protected charitable assets for public benefit, section 8(2) applies subject to the modifications in subsection (1D).
- (1D) The modifications are that—
- (a) in the opening words, the reference to determining whether a body provides or intends to provide public benefit is to be read as if it were a reference to determining whether a body is applying its protected charitable assets for public benefit,
 - (b) in the closing words of paragraph (a), the reference to the consequence of the body exercising its functions is to be read as if it were a reference to the consequence of the body applying its protected charitable assets.
- (2) Despite the removal of a body from the Register, the provisions of this Part set out in subsection (3) continue to apply to the body, but only so far as they relate to ~~property and income referred to in subsection (1)~~ its protected charitable assets.
- (3) Those provisions are—
- (a) in Chapter 4—
 - sections 28 and 29,
 - section 31(1) to (3) and (5) to (9),
 - section 32,
 - section 33(2) to (5),
 - section 34(1) to (3), (5)(a) to (c) and (f) to (h), (7) and (10)(b), and

section 37, and

- (b) in Chapter 6, sections 44 and 45.
- (4) The Court of Session may, on an application by OSCR, approve a scheme prepared by OSCR in accordance with regulations made by the Scottish Ministers for the transfer to a charity specified in the scheme of any ~~property or income~~ **protected charitable assets** which a body removed from the Register is required to apply in accordance with subsection (1).
- (4A) OSCR must consult the Scottish Housing Regulator before making an application under subsection (4) in relation to a registered social landlord (within the meaning of the Housing (Scotland) Act 2010 (asp 17)).
- (5) The court may approve such a scheme only if it is satisfied—
 - (a) that it is necessary or desirable to act for the purpose of protecting the ~~property or income~~ **protected charitable assets** to which the scheme relates or securing a proper application of such ~~property or income~~ **protected charitable assets** for the **charitable** purposes which were set out in the body's entry in the Register immediately before its removal, and
 - (b) that those purposes would be better achieved by transferring the ~~property and income~~ **protected charitable assets** to a charity.
- (6) The court may approve a scheme under subsection (5) subject to modifications.
- (7) A charity receiving ~~property or income~~ **protected charitable assets** in pursuance of a scheme approved under subsection (5) may apply ~~that property or income~~ **the protected charitable assets** for its purposes as it thinks fit.
- (8) The Scottish Ministers may by order disapply subsections (1) to (7) in relation to any property specified in the order.
- (9) An order under subsection (8) may make provision in relation to particular items or types of property or in relation to property owned by particular persons.
- (10) It is not competent for such order to make provision in relation to property which is not owned by a charity on the day the order takes effect.

CHAPTER 3

CO-OPERATION AND INFORMATION

Co-operation

20 Co-operation

- (1) OSCR must, so far as consistent with the proper exercise of its functions, seek to secure co-operation between it and other relevant regulators.
- (2) A “relevant regulator” is a public body or office-holder with functions (whether exercisable in the United Kingdom or elsewhere) which are—
 - (a) similar to those of OSCR, or
 - (b) conferred by any enactment and designed to allow the body or office-holder to regulate persons for other purposes.

- (3) OSCR and any person authorised by virtue of section 38(1) or (2) to exercise functions under this Act must, so far as consistent with the proper exercise of their respective functions, co-operate with each other for the purpose of enabling or assisting the person to exercise those functions under this Act.
- (4) Co-operation does not include the sharing of information which OSCR or any person with whom it is co-operating is prevented by law from disclosing.

Information about charities

21 Public access to Register

- (1) OSCR must make the Register available for public inspection—
 - (a) at all reasonable times at its principal office,
 - (b) at such other places as it thinks fit, and
 - (c) otherwise as it thinks fit.
- (2) It is for OSCR to determine the form and manner in which the Register is made available; but in doing so OSCR must ensure that the information in the Register is made reasonably obtainable.
- (3) OSCR must publicise the arrangements which it makes in pursuance of subsection (1).
- (4) OSCR may charge such fee (not exceeding the cost of supply) as it thinks fit for providing information under any arrangements it makes under subsection (1)(b) and (c).

22 Power of OSCR to obtain information from charities

- (1) OSCR may by notice require any charity to provide to it—
 - (a) any document, or a copy of or extract from any document,
 - (b) documents of any type, or copies of or extracts from such documents,
 - (c) other information or explanation,which OSCR requires in relation to the charity's entry in the Register.
- (2) The notice must specify—
 - (a) the documents, type of documents, copies, extracts, information or explanation which the charity is to provide to OSCR, and
 - (b) the date (which must be at least 14 days after the date on which the notice is given) by which the charity must do so.
- (3) Subsection (1) does not authorise OSCR to require the disclosure of anything which a charity would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

23 Entitlement to information about charities

- (1) A person who requests a charity to provide a copy of its—
 - (a) constitution,
 - (b) latest statement of account **and independent report on accounts** prepared under section 44,

is, if the request is reasonable, entitled to be given that copy constitution or copy statement of account **and independent report on accounts** (if any) by the charity ~~in such form as the person may reasonably request~~.

- (1A) **Where a person is entitled to a copy document under subsection (1), the person is entitled to be given it—**
- (a) **within 28 days of the date on which the request is received by the charity, and**
 - (b) **in such form as the person may reasonably request.**
- (2) A charity may charge such fee as it thinks fit for complying with such a request; but such a fee must not exceed the cost of supplying the document requested or, if less, any maximum fee which the Scottish Ministers may by order prescribe.
- (3) The Scottish Ministers may by order exempt from the duty set out in subsection (1) any charities which meet such criteria as may be specified in the order.

Sharing information

24 Disclosure of information by and to OSCR

- (1) OSCR may disclose any information to any public body or office-holder (in Scotland, in any other part of the United Kingdom or in a country or territory outside the United Kingdom)—
- (a) for any purpose connected with the exercise of OSCR's functions, or
 - (b) for the purpose of enabling or assisting the public body or office-holder to exercise any functions.
- (2) Any person to whom this subsection applies may disclose any information to OSCR for the purpose of enabling or assisting OSCR to exercise any functions.
- (3) Subsection (2) applies to—
- (a) any office-holder in the Scottish Administration,
 - (b) the Scottish Parliamentary Corporate Body,
 - (c) any local authority,
 - (d) any constable, and
 - (e) any other Scottish public authority with mixed functions or no reserved functions.
- (4) A power to disclose information under subsection (1) or (2) is, unless section 25 otherwise provides, subject to any obligation as to secrecy or other restriction on disclosure of the information however imposed.

25 Removal of restrictions on disclosure of certain information

- (1) No obligation as to secrecy or other restriction on disclosure of information however imposed prevents—
- (a) OSCR from disclosing any information to a designated body for—
 - (i) any purpose connected with the exercise of OSCR's functions,
 - (ii) the purpose of enabling or assisting that body to exercise any functions,
 - (b) a designated body from disclosing any information to OSCR for the purpose of enabling or assisting OSCR to exercise any functions,

- (c) a charity trustee of a charity from disclosing any information about that charity to OSCR for the purpose of enabling or assisting OSCR to exercise any functions,
 - (d) any person from disclosing any information to OSCR about any matter in respect of which the person is required or authorised by section 46 to make a report to OSCR, or
 - (e) a relevant financial institution from disclosing any information to OSCR for the purpose of enabling or assisting OSCR to exercise any functions under section 47.
- (2) The Scottish Ministers may, by order, designate—
- (a) for the purposes of paragraph (a) of subsection (1), any public body or office-holder in Scotland, in any other part of the United Kingdom or in a country or territory outside the United Kingdom,
 - (b) for the purposes of paragraph (b) of that subsection, any Scottish public authority with mixed functions or no reserved functions,
- and references in that subsection to a “designated body” are to be construed accordingly.

Supplemental

26 False or misleading information etc.

- (1) It is an offence for a person to provide any information or explanation to OSCR or any other person if—
 - (a) the person providing the information or explanation knows it to be, or is reckless as to whether it is, false or misleading in a material respect, and
 - (b) the information or explanation is provided—
 - (i) in purported compliance with a requirement by or under this Act, or
 - (ii) in other circumstances in which the person providing it knows, or could reasonably be expected to know, that it would be used by OSCR, or provided to OSCR for use, in connection with the exercise of its functions.
- (2) It is an offence for a person deliberately to alter, suppress, conceal or destroy any document (or any part of a document) which the person is, or which that person knows any other person is, required by or under this Act to provide to OSCR.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a period not exceeding 6 months, or to both.

27 Disclosure of information: entitlement under other enactments etc.

Sections 21 to 25 are without prejudice to any entitlement to receive or disclose information under any enactment or otherwise.

CHAPTER 4

SUPERVISION OF CHARITIES ETC.

Inquiries

28 **Inquiries about charities etc.**

- (1) OSCR may at any time make inquiries, either generally or for particular purposes, with regard to—
 - (a) a charity,
 - (b) a body controlled by a charity (or by two or more charities, when taken together),
 - (c) a body which is not entered in the Register which appears to OSCR to represent itself as a charity (or which would, but for section 14, so appear),
 - (d) a person not falling within paragraph (a) to (c) who appears to OSCR to act, or to represent itself as acting, for or on behalf of—
 - (i) a charity, or
 - (ii) a body falling within paragraph (b) or (c),
 - (e) a person who appears to OSCR to represent a body ~~which is not entered in the Register as a charity~~, as a charity despite that body not being entered in the Register,
 - (f) any particular type of charity, of body falling within paragraph (b) or (c), or of person falling within paragraph (d) or (e).
- (2) OSCR may make inquiries under subsection (1) of its own accord or on the representation of any person.
- (2A) It does not matter whether a charity, body or person continues to fall within a paragraph of subsection (1), or continues to exist, for OSCR to be able to make inquiries under that subsection (but see subsection (4A)).
- (3) OSCR may direct any charity, body or person with regard to which it is making inquiries under subsection (1) not to undertake activities specified in the direction for such period of not more than 6 months as is specified in the direction.
- (4) A direction under subsection (3) given to a person falling within paragraph (d) or (e) of subsection (1) may be given only in relation to activities which that person undertakes for or on behalf of the charity or body to which the inquiries relate.
- (4A) Where inquiries are made by virtue of subsection (2A) into a charity, body or person which no longer falls within a paragraph of subsection (1)—
 - (a) the inquiries must relate to the period or periods in which the charity, body or person fell within one or more paragraphs of subsection (1), and
 - (b) no direction may be given under subsection (3),unless the inquiries, or (as the case may be), the direction relates to the application of protected charitable assets (see section 19).
- (5) A direction under subsection (3)—
 - (a) may be revoked at any time,
 - (b) may be varied, but not so as to have effect for a period of more than 6 months from the date on which it is given.

- (6) A person who, without reasonable excuse, refuses or fails to comply with a direction under subsection (3) is guilty of an offence.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 4 on the standard scale or imprisonment for a period not exceeding 3 months, or to both.

29 Power of OSCR to obtain information for inquiries

- (1) OSCR may ~~by notice~~ require any person to provide to it—
 - (a) any document, or a copy of or extract from any document,
 - (b) documents of any type, or copies of or extracts from such documents,
 - (c) any information or explanation,which OSCR considers necessary for the purposes of inquiries under section 28.
- (2) ~~The notice must specify—~~ Where OSCR makes such a requirement, it must give a notice to the person specifying—
 - (a) the documents, type of documents, copies, extracts, information or explanation which the person is to provide to OSCR,
 - (b) the date (which must be at least 14 days after the date on which the notice is given) by which the person must do so, and
 - (c) the effect of subsection (6).
- (2A) But OSCR must not give notice under subsection (2) unless and until the decision to make the requirement under subsection (1) has effect (see section 73(3)).
- (3) Subsection (1) does not authorise OSCR to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.
- (4) OSCR must not disclose any document, information or explanation provided in response to a requirement under subsection (1) except for the purposes of the inquiries in connection with which the requirement was made.
- (5) OSCR may pay to any person a sum in respect of expenses reasonably incurred by the person in complying with a requirement under subsection (1).
- (6) A person who, without reasonable excuse, refuses or fails to comply with a requirement under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale or imprisonment for a period not exceeding 3 months, or to both.

30 Removal from Register of charity which no longer meets charity test

- (1) Where it appears to OSCR, as a result of inquiries under section 28, that a charity no longer meets the charity test it must—
 - (a) direct the charity to take, within such period as may be specified in the direction, such steps as OSCR considers necessary for the purposes of meeting the charity test, or
 - (b) remove the charity from the Register.

- (2) Steps specified in a direction under subsection (1)(a) may include applying to OSCR for approval under section 39 of a reorganisation scheme in relation to the charity's constitution.
- (2A) The power of OSCR to give a direction under subsection (1)(a) includes the power to—
 - (a) vary the direction, but only by—
 - (i) extending the time period specified in the direction, or
 - (ii) removing steps which the charity is required to take, or
 - (b) revoke such a direction.
- (3) OSCR must, if a charity fails to comply with a direction under subsection (1)(a), remove the charity from the Register.

30A Removal from Register where charity no longer has connection to Scotland

- (1) This section applies where, as a result of inquiries under section 28, OSCR considers that it would not be appropriate for it to continue to regulate a charity because the charity has no or negligible connection to Scotland.
- (2) OSCR must direct the charity to take, within such period as may be specified in the direction, such steps (specified in the direction) as OSCR considers necessary for the purposes of establishing a connection to Scotland which is more than negligible.
- (3) The power of OSCR to give a direction under subsection (2) includes the power to—
 - (a) vary the direction, but only by—
 - (i) extending the time period specified in the direction, or
 - (ii) removing steps which the charity is required to take, or
 - (b) revoke the direction.
- (4) OSCR must, if a charity fails to comply with a direction under subsection (2), remove the charity from the Register.
- (5) For the purpose of subsection (1), in considering, in all the circumstances, what connection (if any) the charity has to Scotland, OSCR must have regard to the following factors—
 - (a) whether the charity has a principal office in Scotland,
 - (b) whether the charity occupies any land or premises in Scotland,
 - (c) whether the charity carries out activities in any office, shop or similar premises in Scotland,
 - (d) whether the charity is established under the law of Scotland,
 - (e) whether any of the charity trustees of the charity are resident in Scotland,
 - (f) any other relevant factor.
- (6) The Scottish Ministers may by regulations modify this section to make provision about the factors which are or are not relevant for the purpose of subsection (1).

30B Powers of OSCRC following inquiries: direction to take specified steps

- (1) This section applies where it appears to OSCRC, as a result of inquiries under section 28—
 - (a) that there has been misconduct in the administration of—
 - (i) a charity, or
 - (ii) a body controlled by a charity, or
 - (b) that it is necessary or desirable to act for the purpose of protecting the property of a charity or securing a proper application of such property for its purposes.
- (2) OSCRC may direct the charity or body to take, within such period as may be specified in the direction, such steps (specified in the direction) as OSCRC considers to be expedient in the interests of the charity.
- (3) The power of OSCRC to give a direction under subsection (2) includes the power to—
 - (a) vary the direction, but only by—
 - (i) extending the time period specified in the direction,
 - (ii) removing steps which the charity or body is required to take,
 - (b) revoke the direction,
 - (c) give more than one direction under that subsection in respect of the same inquiries (in addition to any direction that may be given under section 31).
- (4) A direction under subsection (2)—
 - (a) may require steps to be taken whether or not they would otherwise be within the powers exercisable by the charity or body, but
 - (b) may not require any steps to be taken which are—
 - (i) prohibited by any enactment,
 - (ii) expressly prohibited by the constitution of the charity or (as the case may be) body, or
 - (iii) inconsistent with the charity's purposes.
- (5) Anything done by a charity or body under the authority of a direction under subsection (2) is to be treated as properly done in the exercise of the powers exercisable by it.
- (6) Subsection (5) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such a direction.

31 Powers of OSCRC following inquiries

Powers of OSCRC following inquiries: temporary suspension or restriction of conduct

- (1) Subsections (4), (6) and (7) apply where it appears to OSCRC, as a result of inquiries under section 28—
 - (a) that there has been misconduct in the administration of—
 - (i) a charity, or
 - (ii) a body controlled by a charity, or
 - (b) that it is necessary or desirable to act for the purpose of protecting the property of a charity or securing a proper application of such property for its purposes.

- (2) Subsections (5) to (7) apply where it appears to OSCR, as a result of inquiries under section 28—
 - (a) that a body which is not a charity is being or has been represented as a charity, or
 - (b) that a charity which is not entitled to refer to itself in either of the ways described in section 13(2) is being or has been represented as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland.
- (3) Subsections (8) and (9) apply where it appears to OSCR, as a result of inquiries under section 28, that there is or has been misconduct by a person falling within section 28(1)(d) in any activity which the person undertakes for or on behalf of the charity or body referred to in that provision.
- (4) OSCR may, by notice, suspend any person concerned in the management or control of the charity or body who appears to it to—
 - (a) have been responsible for or privy to the misconduct,
 - (b) have contributed to, or facilitated, the misconduct, or
 - (c) be unable or unfit to perform that person's functions in relation to the property of the charity or body.
- (5) OSCR may direct—
 - (a) the body representing itself as a charity,
 - (b) the person representing the body as a charity,
 - (c) the charity representing itself as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland, or, as the case may be
 - (d) the person representing the charity as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland,to stop doing so.
- (6) OSCR may give a direction restricting the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the charity or body without OSCR's consent.
- (7) OSCR may direct any relevant financial institution or other person holding property on behalf of the charity or body or of any person concerned in its management or control not to part with the property without OSCR's consent.
- (8) OSCR may direct the person—
 - (a) to cease acting, or representing itself as acting, for or on behalf of the charity or body in any activity specified in the direction,
 - (b) to pay to the charity or body, within such period as the direction may specify, any sums which it has collected for the charity or body and which are held by it or by any relevant financial institution or other person on its behalf, after deducting any sums payable to the person or any other person under an agreement with the charity or body.
- (9) OSCR may direct any relevant financial institution or other person holding property which OSCR considers to be, or to represent, sums collected for the charity or body not to part with the property without OSCR's consent.

- (10) OSCR's power to suspend a person by giving notice under subsection (4)(a) or (b) does not apply if OSCR considers that the person has acted honestly and reasonably in relation to the misconduct concerned and ought fairly to be excused.

32 ~~Suspensions and directions: procedure~~

Suspensions and directions under section 31: procedure

- (1) A suspension under subsection (4) and a direction under any of subsections (5) to (9) of section 31—
- (a) has effect for such period of not more than 6 months as is specified in the suspension or direction,
 - (b) may be revoked at any time,
 - (c) may be varied, but not so as to have effect for a period of more than 6 months from the date on which the suspension or direction first has effect.
- (2) Where such a suspension has been made or direction has been given—
- (a) a further suspension or direction may be made or given under section 31 (**in addition to any direction that may be given under section 30B**), but
 - (b) the further suspension or direction **under section 31** ceases to have effect on the same date as the original suspension or direction (unless stated to cease to have effect earlier).
- (3) A copy of the notice given under section 72 in respect of a—
- (a) suspension under subsection (4) of section 31, or
 - (b) direction under subsection (5)(b) or (d) or (8) of that section,
- must be given to the charity or body in question.
- (4) A copy of the notice given under section 72 in respect of a direction under subsection (7) or (9) of that section must be given to the person directed.
- (5) A person who, without reasonable excuse—
- (a) contravenes a suspension under subsection (4) of section 31, or
 - (b) refuses or fails to comply with a direction under any of subsections (5) to (9) of that section,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a period not exceeding 6 months, or to both.

33 **Reports on inquiries**

- (1) OSCR must prepare a report of the subject matter of inquiries made under section 28 if—
- (a) as a result of the inquiries it—
 - (i) gives a direction, or removes a charity from the Register, under section 30,
 - (ia) **gives a direction under section 30A,**
 - (ib) **gives a direction under section 30B,**
 - (ii) suspends a person under subsection (4) of section 31, or
 - (iii) gives a direction under any of subsections (5) to (9) of that section, or

- (b) in any other case, it is requested to do so by the person in respect of whom the inquiries were made and it has not previously prepared a report of the subject matter of those inquiries under this subsection or subsection (2).
- (2) OSCR may prepare a report of the subject matter of any other inquiries under section 28.
- (3) A report prepared under this section may relate to two or more inquiries.
- (4) Apart from identifying the person in respect of whom inquiries were made, a report under this section must not—
 - (a) mention the name of any person, or
 - (b) contain any particulars which, in OSCR's opinion—
 - (i) are likely to identify any person, and
 - (ii) can be omitted without impairing the effectiveness of the report,
 unless OSCR considers it is necessary to do so.
- (5) OSCR must—
 - (a) send a copy of a report prepared under subsection (1) to the person in respect of whom the inquiries were made, and
 - (b) publish a report prepared under this section or such other statement of the result of inquiries made under section 28 as OSCR thinks fit in such manner as OSCR thinks fit.

Powers of Court of Session

34 Powers of Court of Session

- (1) Where, on an application by OSCR, it appears to the Court of Session—
 - (a) that there is or has been misconduct in the administration of—
 - (i) a charity, or
 - (ii) a body controlled by a charity (or by two or more charities, when taken together), or
 - (b) that it is necessary or desirable to act for the purpose of protecting the property of a charity or securing a proper application of such property for its purposes,
 the court may exercise any of the powers set out in subsection (5)(a) and (c) to (g).
- (2) Where, on an application by OSCR, it appears to the Court of Session that a body which is not a charity is or has been representing itself as a charity, the court may exercise any of the powers set out in subsection (5)(b) to (g).
- (3) Where, on an application by OSCR, it appears to the Court of Session that a person is or has been representing a body which is not a charity as a charity, the court may exercise any of the powers set out in subsection (5)(f) to (h).
- (4) Where, on an application by OSCR, it appears to the Court of Session that a charity which is not entitled to refer to itself in either of the ways described in section 13(2) is being or has been represented as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland, the court may exercise any of the powers set out in subsections (5)(f), (g) and (i).
- (5) Those powers are power to—

- (a) interdict (whether temporarily or permanently) the charity or body from such action as the court thinks fit,
 - (b) interdict (whether temporarily or permanently) the body from representing itself as a charity or from such other action as the court thinks fit,
 - (c) appoint a judicial factor (whether temporarily or permanently) to manage the affairs of the charity or body,
 - (d) where the charity or body is a trust, appoint a trustee,
 - (e) suspend or remove any person concerned in the management or control of the charity or body,
 - (ea) make an order declaring that any person who was concerned in the management or control of a charity or body is to be treated, for the ~~purpose~~ purposes of section 69(2)(c) (disqualification from being charity trustee) and section 70ZA (record of persons removed from office) as having been removed from being concerned in the management or control of the charity or body, notwithstanding that—
 - (i) the person is no longer concerned in the management or control of the charity or body,
 - (ii) the body is no longer a charity,
 - (iii) the body is no longer controlled by a charity (or charities), or
 - (iv) the charity or body has ceased to exist,
 - (f) order any relevant financial institution or other person holding property on behalf of the charity or body or of any person concerned in its management or control not to part with the property without the court's consent,
 - (g) make an order restricting the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the charity or body without the court's consent,
 - (h) interdict (whether temporarily or permanently) the person from representing the body as a charity or from such other action as the court thinks fit,
 - (i) interdict (whether temporarily or permanently) the charity or, as the case may be, the person from representing the charity as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland or from such other action as the court thinks fit.
- (6) Where the court appoints a trustee in pursuance of subsection (5)(d), section 22 of the Trusts (Scotland) Act 1921 (c. 58) applies as if the trustee had been appointed under that section.
 - (7) The power in subsection (5)(g) applies despite anything in the constitution of the charity or body.
 - (8) Subsection (9) applies where, on an application by OSCR, it appears to the Court of Session that there is or has been misconduct by a person falling within section 28(1)(d) in any activity which the person undertakes for or on behalf of the charity or body referred to in that provision.
 - (9) The court may—
 - (a) interdict (whether temporarily or permanently) the person from acting, or representing itself as acting, on behalf of the charity or body,

- (b) order the person to pay to the charity or body any sums which it has collected for the charity or body and which are held by it, any relevant financial institution or other person holding money on its behalf, after deducting any sums payable to the person or any other person under an agreement with the charity or body,
 - (c) order any relevant financial institution or other person holding property which the court considers to be, or to represent, sums collected for the charity or body not to part with the property without the court's consent.
- (10) The court may—
- (a) recall the suspension of a person in pursuance of subsection (5)(e),
 - (b) vary or recall an order in pursuance of subsection (5)(f) or (g) or under subsection (9)(b) or (c).

35 Transfer schemes

- (1) The Court of Session may, on an application by OSCR, approve a scheme prepared by OSCR in accordance with regulations made by the Scottish Ministers for the transfer to a charity specified in the scheme of any assets of—
 - (a) another charity,
 - (b) a body which is controlled by a charity (or by two or more charities, when taken together),
 - (c) a body which is not a charity but which is or has been representing itself as a charity.
- (2) The court may approve a scheme in relation to a charity only if it is satisfied—
 - (a) that there is or has been misconduct in the administration of the charity,
 - (b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application of such property for its purposes, and
 - (c) that the charity's purposes would be better achieved by transferring its assets to another charity.
- (3) The court may approve a scheme in relation to a body falling within paragraph (b) of subsection (1) only if it is satisfied—
 - (a) that there is or has been misconduct in the administration of the body or any of the charities which control it,
 - (b) that it is necessary or desirable to act for the purpose of protecting the property of the body or any such charity, and
 - (c) that the transfer provided for by the scheme is reasonable.
- (4) The court may approve a scheme in relation to a body falling within paragraph (c) of subsection (1) only if it is satisfied—
 - (a) that the body falls within that paragraph, and
 - (b) that the transfer provided for by the scheme is reasonable.
- (5) The court may approve a scheme under this section subject to modifications.
- (6) A charity receiving property in pursuance of a scheme approved under this section may apply that property for its purposes as it thinks fit.

36 Powers in relation to English and Welsh charities

- (1) Subsection (2) applies where the Charity Commission for England and Wales informs OSCR that a relevant financial institution or other person in Scotland holds moveable property on behalf of a body—
 - (a) which is registered as a charity in England and Wales in accordance with section 30 of the Charities Act 2011, or
 - (b) which, by virtue of subsection (2) of that section, is not required to register as a charity under that section.
- (2) The Court of Session may, on an application by OSCR, make an order requiring the relevant financial institution or other person not to part with the property without the court's consent.
- (3) An order under subsection (2) may be made subject to conditions and may be varied or recalled.
- (4) Where the court has made an order under subsection (2) and, on an application by OSCR, it is satisfied as to the matters set out in subsection (5) it may transfer the property to a charity specified in the application—
 - (a) which has purposes which are the same as or which resemble closely the purposes of the body whose property is transferred, and
 - (b) which has intimated that it is prepared to receive the property.
- (5) Those matters are—
 - (a) that there has been misconduct in the administration of the body, and
 - (b) that it is necessary or desirable to transfer the property for the purpose of protecting it or securing a proper application of it for the purposes of the body from which it is to be transferred.

37 Expenses

In proceedings before it under sections 34 to 36 in relation to a charity, the Court of Session may, instead of awarding expenses against the charity, award expenses against a charity trustee of the charity or against any two or more of its charity trustees jointly and severally.

Supplemental

38 Delegation of functions

- (2) OSCR may authorise any Scottish public authority with mixed functions or no reserved functions to exercise any of the OSCR's functions under sections 28 to 35 (other than section 30) and section 70A in so far as they are exercisable in relation to—
 - (a) such charities or bodies, or types of charity or body, as OSCR may specify in the authorisation, and
 - (b) persons acting for or on behalf of those charities or bodies.
- (3) Such an authorisation may be made only if the authorised person has other regulatory functions conferred on it by an enactment in relation to the charities or types of charity in respect of which the authorisation is made.
- (4) OSCR must send a copy of such an authorisation to each charity to which it relates.

- (5) OSCR must, before making such an authorisation, consult such persons (including the person it proposes to authorise) as it thinks fit.
- (6) OSCR may, at any time, withdraw an authorisation under subsection (2) (and subsections (4) and (5) apply in relation to such a withdrawal as they apply in relation to an authorisation).
- (8) It is not competent for OSCR to exercise any of its functions which are, by virtue of subsection (2), delegated to another public body or office-holder (unless it considers it necessary or expedient to do so in relation to its functions under section 30).
- (9) Sections 24 to 26 apply in relation to a public body or office-holder to whom OSCR's functions are delegated by virtue of subsection (2) as they apply to OSCR, but subject to the following modifications—
 - (a) references in those sections to OSCR and to OSCR's functions are to be read as references to the public body or office-holder and to the functions delegated to it, and
 - (b) the reference in section 25(1)(d) to section 46 is to be read as a reference to subsection (10).
- (10) Where any of OSCR's functions are delegated to another public body or office-holder by virtue of subsection (2), a person to whom section 46 applies—
 - (a) must report to the body or office-holder on any matter which the person would, but for that delegation, be required by section 46(2) to report on to OSCR,
 - (b) may report to the body or office-holder on any matter which the person would, but for that delegation, be authorised by subsection 46(3) to report on to OSCR.
- (11) A duty or power which arises under subsection (10) is not affected if the person in relation to whom it arises subsequently stops acting in the capacity mentioned in section 46(1).

CHAPTER 5

REORGANISATION OF CHARITIES

39 Reorganisation of charities: applications by charity

- (1) OSCR may, on the application of a charity, approve a reorganisation scheme proposed by the charity if it considers—
 - (a) that any of the reorganisation conditions is satisfied in relation to the charity, and
 - (b) that the proposed reorganisation scheme will—
 - (i) where the condition satisfied is that set out in paragraph (a) or (b) of section 42(2), enable the resources of the charity to be applied to better effect for charitable purposes consistently with the spirit of its constitution, having regard to changes in social and economic conditions since it was constituted, or
 - (ii) where the condition satisfied is that set out in paragraph (c) or (d) of that section, enable the charity to be administered more effectively.
- (1A) But OSCR must not approve a reorganisation scheme where—
 - (a) the reorganisation condition satisfied is that set out in section 42(2)(d), and
 - (b) the proposed provision would enable the charity to make amendments to its constitution which would not be consistent with the spirit of the constitution.

- (2) The Scottish Ministers may by regulations make such provision as they think fit in relation to the procedure for applying for and determining applications under this section.
- (3) Such regulations may in particular make provision about—
 - (a) the form and manner in which applications must be made,
 - (b) the period within which OSCR must make a decision on an application,
 - (c) publication of proposed reorganisation schemes,and may make different provision in relation to different types of charity.

40 Reorganisation of charities: applications by OSCR

- (1) Where OSCR considers—
 - (a) that any of the reorganisation conditions is satisfied in relation to a charity, and
 - (b) that a reorganisation scheme proposed by it or by the charity trustees of the charity will—
 - (i) where the condition satisfied is that set out in paragraph (a) or (b) of section 42(2), enable the resources of the charity to be applied to better effect for charitable purposes consistently with the spirit of its constitution, having regard to changes in social and economic conditions since it was constituted, or
 - (ii) where the condition satisfied is that set out in paragraph (c) or (d) of that section, enable the charity to be administered more effectively,

OSCR may, of its own accord or on the application of the charity trustees of the charity, apply to the Court of Session for approval of the scheme.

- (2) The Court of Session may, on an application under subsection (1), approve the proposed reorganisation scheme if it considers that the matters set out in paragraphs (a) and (b) of that subsection are satisfied in relation to the charity to which the application relates.
- (2A) But the Court of Session must not approve a reorganisation scheme where—
 - (a) the reorganisation condition satisfied is that set out in section 42(2)(d), and
 - (b) the proposed provision would enable the charity to make amendments to its constitution which would not be consistent with the spirit of the constitution.
- (3) The charity trustees of a charity may enter appearance as a party in proceedings on an application under subsection (1) in relation to the charity.
- (4) OSCR must, not less than 28 days before making an application under subsection (1), notify the charity in question of its intention to do so.

41 Approved schemes

A charity may, despite any provision of its constitution having contrary effect, proceed with any variation, transfer or amalgamation for which an approved reorganisation scheme makes provision.

42 Reorganisation: supplementary

- (1) This section applies for the interpretation of Chapter 5.
- (2) The “reorganisation conditions” are—

- (a) that some or all of the purposes of the charity—
 - (i) have been fulfilled as far as possible or adequately provided for by other means,
 - (ii) can no longer be given effect to (whether or not in accordance with the directions or spirit of its constitution),
 - (iii) have ceased to be charitable purposes, or
 - (iv) have ceased in any other way to provide a suitable and effective method of using its property, having regard to the spirit of its constitution,
 - (b) that the purposes of the charity provide a use for only part of its property,
 - (c) that a provision of the charity's constitution (other than a provision setting out the charity's purposes) can no longer be given effect to or is otherwise no longer desirable, and
 - (d) that it is desirable to introduce a provision (other than a provision setting out a new purpose) to a charity's constitution.
- (3) A “reorganisation scheme” is a scheme for—
- (a) variation of the constitution of the charity (whether or not in relation to its purposes),
 - (b) transfer of the property of the charity (after satisfaction of any liabilities) to another charity (whether or not involving a change to the purposes of the other charity), or
 - (c) amalgamation of the charity with another charity.
- (4) Nothing in section 40 affects the power of the Court of Session to approve a cy près scheme in relation to a charity.
- (5) Sections 39 and 40 do not apply to any charity constituted under a Royal charter or warrant or under any enactment.
- (6) But, despite subsection (5), those sections do apply to an endowment if its governing body is a charity.
- (7) In subsection (6), “endowment” and “governing body” have the same meaning as in Part 6 (reorganisation of endowments) of the Education (Scotland) Act 1980 (c. 44).

43 Endowments

In section 122 (interpretation of Part 6) of the Education (Scotland) Act 1980 (c. 44), after subsection (3) insert—

- “(4) This Part, apart from section 104, does not apply in relation to any endowment the governing body of which is a charity within the meaning of section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).”

CHAPTER 5A

REORGANISATION OF RESTRICTED FUNDS

43A Reorganisation of restricted funds: applications by charity

- (1) OSCR may, on the application of a charity, approve a restricted funds reorganisation scheme proposed by the charity if—

- (a) it considers—
 - (i) that any of the conditions specified in subsection (2) is satisfied in relation to the restricted funds, and
 - (ii) that the proposed reorganisation will enable the resources of the restricted funds to be applied to better effect for charitable purposes consistently with the charity's constitution, and
 - (b) it is satisfied that the charity is unable to ascertain the wishes of the donor.
- (2) The conditions are—
- (a) that some or all of the purposes of the restricted funds—
 - (i) have been fulfilled as far as possible or adequately provided for by other means,
 - (ii) can no longer be given effect to (whether or not in accordance with the directions or spirit of the restricted funds' purposes),
 - (iii) have ceased to be charitable purposes,
 - (iv) have ceased in any other way to provide a suitable and effective method of using the funds, having regard to the spirit of the restricted funds' purposes,
 - (b) that the purposes of the restricted funds provide a use for only part of its property.
- (3) The Scottish Ministers may by regulations make such provision as they think fit in relation to making and determining applications under this section.
- (4) Such regulations may in particular make provision about—
- (a) the form and manner in which applications must be made,
 - (b) the period within which OSCR must make a decision on an application,
 - (c) publication of proposed restricted funds reorganisation schemes,
 - (d) the action a charity may take in order to satisfy OSCR of the matters described in subsection (1)(b),
- and may make different provision in relation to different types of charity.

43B Reorganisations of restricted funds: applications by OSCR

- (1) Where OSCR—
- (a) considers—
 - (i) that any of the conditions specified in section 43A(2) is satisfied in relation to a charity, and
 - (ii) that a restricted funds reorganisation scheme proposed by it or by the charity trustees of the charity will enable the resources of the restricted funds to be applied to better effect for charitable purposes consistently with the charity's constitution, and
 - (b) is satisfied that it is not possible to ascertain the wishes of the donor,
- OSCR may, of its own accord or on the application of the charity trustees of the charity, apply to the Court of Session for approval of the scheme.

- (2) The Court of Session may, on an application under subsection (1), approve the proposed restricted funds reorganisation scheme if it considers that the matters set out in paragraphs (a) and (b) of that subsection are satisfied in relation to the restricted funds to which the application relates.
- (3) The charity trustees of a charity may enter appearance as a party in proceedings on an application under subsection (1) in relation to the charity.
- (4) OSCR must, not less than 28 days before making an application under subsection (1), notify the charity in question of its intention to do so.
- (5) The Scottish Ministers may by regulations make such provision as they think fit in relation to action which may be taken to satisfy OSCR of the matter described in subsection (1)(b).
- (6) Nothing in this section affects the power of the Court of Session to approve a *cy prè*s scheme in relation to a charity.

43C Approved restricted funds reorganisation schemes

A charity may, despite any condition relating to restricted funds having contrary effect, use the restricted funds in such manner as permitted by an approved restricted funds reorganisation scheme.

43D Restricted funds reorganisations: supplementary

In this chapter—

“donor” means such person or body who may vary the purpose of, or any conditions imposed in relation to, restricted funds as may be specified by regulations made by the Scottish Ministers as they think fit,

“restricted funds” means property (including money) given to a charity for a specific purpose and in respect of which conditions have been imposed as to its use,

a “restricted funds reorganisation scheme” is a scheme for—

- (a) the variation of the purpose for which restricted funds may be used,
- (b) the variation or removal of any condition imposed on the charity in relation to the use of restricted funds.

CHAPTER 6

CHARITY ACCOUNTS

Duty to keep accounts etc.

44 Accounts

- (1) A charity must—
 - (a) keep proper accounting records,
 - (b) prepare for each financial year of the charity a statement of account, including a report on its activities in the financial year,
 - (c) have the statement of account independently examined or audited,
 - (ca) have the independent examiner or auditor make a report in respect of the examination or (as the case may be) audit (an “independent report on accounts”), and

- (d) after ~~such examination or audit, send a copy of the~~ the independent report on accounts has been made, send a copy of the report and statement of account to OSCR,

in accordance with regulations under subsection (4).

- (2) Accounting records kept in pursuance of subsection (1)(a) must be preserved by the charity for 6 years from the end of the financial year ~~in which they are made~~ to which they relate.
- (2A) Where the charity ceases to be a charity before the end of the period mentioned in subsection (2), the records must be preserved for the remainder of that period by—
 - (a) the body which was the charity, or
 - (b) where that body ceases to exist, a person notified to OSCR who, immediately before it ceased to exist, was—
 - (i) a charity trustee of the charity, or
 - (ii) where the body was not a charity at that time, concerned in the management or control of the body.
- (3) ~~Subsection (2) is~~ Subsections (2) and (2A) are without prejudice to any other enactment or rule of law.
- (4) The Scottish Ministers may by regulations make provision about the matters referred to in subsection (1) including—
 - (a) the meaning of “financial year”,
 - (b) the information to be contained in the accounting records and statement of account,
 - (c) the manner in which that information is to be presented,
 - (d) the keeping and preservation of the accounting records,
 - (e) the methods and principles according to which, and the time by which, the statement of account is to be prepared,
 - (f) the time by which the copy statement of account is to be sent to OSCR,
 - (g) examination or audit of the statement of account (including matters relating to the independent report on accounts),
 - (h) such other matters in relation to the accounts of a charity as the Scottish Ministers think necessary or expedient.
- (4A) Regulations under subsection (4) must be framed so that a charity is not required to include any information in its statement of account that is excluded from its entry in the Register under section 3(4).
- (5) Regulations under subsection (4) may make different provision in relation to different types of charity, including provision exempting charities of a particular type from some or all of the requirements of this section.

45 ~~Failure to provide statement of account~~

Failure to provide statement of account: preparation by appointed person

- ~~(1) This section applies where a charity fails, within such period as is specified in regulations under section 44(4), to send a copy of a statement of account to OSCR in pursuance of subsection (1)(d) of that section.~~

- (1) This section applies where—
 - (a) a charity has failed to send a copy of its statement of account to OSCR in pursuance of section 44(1)(d), and
 - (b) the time by which the statement was due to be sent to OSCR by virtue of provision made under section 44(4)(f) has passed.
- (2) OSCR may, after notifying the charity of its intention to do so, appoint a suitably qualified person (an “appointed person”) to prepare such a statement of account.
- (3) An appointed person is entitled—
 - (a) on giving reasonable notice, to enter premises occupied by the charity at all reasonable times,
 - (b) to have access to, and take possession of, any document appearing to the appointed person to relate to the financial affairs of the charity, and
 - (c) to require any charity trustee, or agent or employee, of the charity to give the person such assistance, information or explanation as the appointed person may reasonably require.
- (4) The charity trustees of the charity are personally liable jointly and severally for—
 - (a) any costs incurred by OSCR in relation to the appointment of the appointed person, and
 - (b) the expenses of the appointed person in performing that person's functions under this section.
- (5) The appointed person must—
 - (a) send to OSCR the statement of account prepared in pursuance of subsection (2),
 - (b) submit to OSCR a report on the affairs and accounting records of the charity, and
 - (c) send a copy of the statement of account and report to each person appearing to the appointed person to be a charity trustee of the charity.
- (6) A person who, without reasonable excuse, refuses or fails to comply with a requirement of an appointed person under subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

45A Failure to provide statement of account: removal from Register

- (1) This section applies where—
 - (a) a charity has failed to send a copy of its statement of account to OSCR in pursuance of section 44(1)(d),
 - (b) the time by which the statement was due to be sent to OSCR by virtue of provision made under section 44(4)(f) has passed,
 - (c) the charity has not responded to communications from OSCR in respect of the failure, and
 - (d) a statement of account has not been prepared, and is not being prepared, under section 45.
- (2) OSCR may give the charity notice of its intention to remove the charity from the Register.
- (3) Unless the charity makes contact with OSCR within 3 months of the date on which notice under subsection (2) is given, OSCR may remove the charity from the Register.

- (4) A notice under subsection (2) must set out—
 - (a) that the notice has been given because the criteria in paragraphs (a) to (d) of subsection (1) have been met, and
 - (b) that the charity may be removed from the Register unless it makes contact with OSCR within the period specified in subsection (3).
- (5) OSCR—
 - (a) must publish on its website a list of charities to which a notice under subsection (2) has been issued and remains in effect,
 - (b) may take such further steps as appear to it to be appropriate with a view to bringing the giving of a notice under subsection (2) to the attention of persons likely to be affected by it.
- (6) In relation to a SCIO, the power in subsection (3) to remove a charity from the Register is a power to take steps in accordance with regulations made under section 64(1)(d) to secure the dissolution of the SCIO and, following such dissolution, to remove it from the Register.

Access to charity accounts

45B Public access to charity accounts kept by OSCR

- (1) OSCR must—
 - (a) keep any copy of a statement of account and independent report on accounts sent to it under section 44(1)(d) for at least 5 years from the end of the financial year to which the document relates, and
 - (b) during the period for which the copy is so kept, make it available for public inspection—
 - (i) at all reasonable times at its principal office,
 - (ii) at such other places as it thinks fit, and
 - (iii) otherwise as it thinks fit.
- (2) It is for OSCR to determine the manner in which copies of statements of account and independent reports on accounts are made available.
- (3) OSCR must publicise the arrangements which it makes in pursuance of subsection (1)(b).

Duty to report matters to OSCR

46 Duty of auditors etc. to report matters to OSCR

- (1) This section applies to any person appointed to carry out an independent examination or audit of a charity's statement of account (including, in the case of a charity which is a company, any person appointed as auditor under Chapter 2 of Part 16 of the Companies Act 2006) who is acting in the appointed capacity.
- (2) A person to whom this section applies who becomes aware of any matter—
 - (a) which relates to the activities or affairs of—
 - (i) the charity, or

- (ii) any institution or body corporate connected to that charity, and
 - (b) which the person has reasonable cause to believe is likely to be of material significance for the purposes of the exercise by OSCR of its functions under section 28, 30 or 31,

must immediately report **in writing** on the matter to OSCR.
- (3) A person to whom this section applies who becomes aware of any matter—
 - (a) which does not appear to the person to be one which the person is required to report under subsection (2), but
 - (b) which the person has reasonable cause to believe is likely to be relevant for the purposes of the exercise by OSCR of any of its functions,

may report on the matter to OSCR.
- (4) A duty or power which arises under subsection (2) or (3) is not affected if the person in relation to whom it arises subsequently stops acting in the capacity mentioned in subsection (1).
- (5) An institution or body corporate is connected to a charity if—
 - (a) it is an institution which is controlled (whether directly or through one or more nominees) by, or, as the case may be
 - (b) it is a body corporate in which a substantial interest is held by,

the charity or any one or more of the charity trustees acting in that capacity.
- (6) Section 105 sets out when a person is to be treated as controlling an institution or as having a substantial interest in a body corporate.

Dormant charity accounts

47 Dormant accounts of charities

- (1) Subsection (3) applies where—
 - (a) a relevant financial institution (whether or not in response to a request from OSCR) informs OSCR that every account held by the institution in the name of or on behalf of a body appearing to the institution to be a relevant body is dormant,
 - (b) OSCR is satisfied that the body is a relevant body, and
 - (c) OSCR is unable, after making reasonable inquiries, to locate any person concerned in the management or control of the body.
- (2) A relevant body is one which is, has at any time been or, in the case of a body which has ceased to exist, was prior to such cessation—
 - (a) a charity, or
 - (b) entitled by virtue of section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) to describe itself as a “Scottish charity”.
- (3) OSCR must transfer the amount standing to the credit of the relevant body in the dormant accounts (less any amount which it is authorised by regulations under section 48(1) to retain) to—
 - (a) such charity as OSCR may determine, having regard to the purposes of the relevant body and the purposes of the charity, or

- (b) where OSCR is unable to ascertain the purposes of the relevant body, to such charity as OSCR considers appropriate.
- (4) For the purposes of subsection (3), OSCR may effect any transaction in relation to the dormant accounts (including a transaction closing any such account).
- (5) Where under subsection (3) OSCR transfers an amount to 2 or more charities, it may divide the amount among those charities as it thinks fit.
- (6) A charity to which an amount is transferred under this section may apply the amount for its purposes as it thinks fit.
- (7) The receipt by—
 - (a) OSCR of an amount withdrawn or transferred from an account by virtue of this section is a complete discharge of the relevant financial institution, or
 - (b) a charity of an amount received from OSCR by virtue of this section is a complete discharge of OSCR,
 in respect of the amount.
- (8) OSCR's power under subsection (3) ceases—
 - (a) if the relevant financial institution by which the accounts are held informs OSCR that the accounts (or any of them) are no longer dormant, or
 - (b) if OSCR becomes aware of the identity of a person concerned in the management or control of the relevant body and informs the relevant financial institution of that fact.

48 Dormant accounts of charities: procedure and interpretation

- (1) The Scottish Ministers may, by regulations, make provision as to—
 - (a) the procedure to be followed by OSCR under section 47,
 - (b) the extent to which OSCR, in transferring an amount under subsection (3) of that section, may retain a sum in respect of its expenses in exercising its functions under that section.
- (2) An account is dormant for the purposes of section 47 if no transaction other than—
 - (a) a payment into the account, or
 - (b) a transaction effected by the relevant financial institution holding the account,
 has been effected in relation to the account within the period of 5 years immediately preceding the dormancy date.
- (3) An account is no longer dormant for the purposes of that section if a transaction other than—
 - (a) a payment into the account,
 - (b) a transaction effected by the relevant financial institution holding the account, or
 - (c) a transaction effected by OSCR in pursuance of subsection (3) of that section,
 is effected after the dormancy date.
- (4) The dormancy date is the date on which the institution informs OSCR as mentioned in section 47(1)(a).

Duty to submit annual return

48A Annual returns

- (1) A charity must prepare for each of its financial years an annual return in such form, and containing such information, as may be required by OSCR.
- (2) Such a return must be sent to OSCR by the date by which the charity is, by virtue of provision made under section 44(4)(f), required to send OSCR a copy statement of account in respect of the financial year in question.
- (3) OSCR must publicise any requirements set under subsection (1).

CHAPTER 7

SCOTTISH CHARITABLE INCORPORATED ORGANISATIONS

Nature and constitution

49 Scottish charitable incorporated organisations

- (1) A charity may be constituted as a Scottish charitable incorporated organisation (a “SCIO”).
- (2) A SCIO is a body corporate having—
 - (a) a constitution,
 - (b) a principal office in Scotland,
 - (c) 2 or more members.
- (3) Its membership may, but need not, consist of or include some or all of its charity trustees.
- (4) The members are not liable to contribute to the assets of the SCIO if it is wound up.

50 Constitution and powers

- (1) A SCIO's constitution must state its name and its purposes.
- (2) A SCIO's constitution must make provision—
 - (a) about who is eligible for membership, and how a person becomes a member, and
 - (b) for the appointment of 3 or more persons (“charity trustees”) who are to be charged with the general control of the SCIO's administration, and about any conditions of eligibility for becoming a charity trustee.
- (3) A SCIO's constitution must also provide for such other matters, and comply with such requirements, as are specified in regulations made by the Scottish Ministers.
- (4) A SCIO must use and apply its property in furtherance of its purposes and in accordance with its constitution.
- (5) Subject to anything in its constitution, a SCIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.
- (6) For the purposes of managing the affairs of a SCIO, its charity trustees may exercise all the SCIO's powers.

51 General duty of members of SCIO

Subsections (1)(a), (3) and (4) of section 66 apply to the members of a SCIO who are not charity trustees as they apply to its charity trustees.

52 ~~Name and status~~

References in SCIO documents

- (1) The name of a SCIO must appear in legible characters on—
 - (a) such documents issued by or on behalf of the SCIO,
 - (b) such documents signed by or on behalf of the SCIO,as may be specified in regulations made by the Scottish Ministers.
- (2) Subsection (3) applies where the name of a SCIO does not include—
 - (a) “Scottish charitable incorporated organisation”, or
 - (b) “SCIO” (with or without a full stop after each letter),whether or not capital letters are used.
- (3) Where this subsection applies, the fact that a SCIO is a SCIO must be stated in legible characters in all the documents referred to in subsection (1).
- (3A) Regulations under subsection (1) may also require such other information as may be specified in the regulations to be stated in legible characters in the documents referred to in that subsection.
- (3B) Such regulations may—
 - (a) exempt SCIOs, or SCIOs of a particular type, from any of the requirements imposed by virtue of subsection (3A),
 - (b) provide that any statement required may, in the case of documents which are otherwise wholly or mainly in a language other than English, be made in that other language.
- (4) Section 15 does not apply in relation to a SCIO.
- (5) For the purposes of this section, a reference to a document—
 - (a) issued by or on behalf of the SCIO, or
 - (b) signed by or on behalf of the SCIO,includes a reference to a web page on a website operated by or on behalf of the SCIO.

53 Offences etc.

- (1) A charity trustee of a SCIO or a person on the SCIO's behalf who—
 - (a) issues, or authorises the issue of, any document referred to in subsection (1)(a) of section 52, or
 - (b) signs, or authorises the signature on behalf of the SCIO of, any document referred to in subsection (1)(b) of that section,which does not comply with subsections (1) and (3) of that section is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) OSCR may direct—

- (a) any body which is not a SCIO and which is representing itself as being a SCIO,
 - (b) any person who is representing that any such body is a SCIO,
- to stop doing so by such date as OSCR may direct.

- (3) The Court of Session may, on an application by OSCR, interdict—
 - (a) any body which is not a SCIO from representing itself as a SCIO,
 - (b) a person who is representing that such a body is a SCIO from doing so.
- (4) OSCR may not apply for such an interdict against a body or person unless the body or person has failed to comply with a direction under subsection (2).

Creation of SCIO and entry in Register

54 Application for creation of SCIO

- (1) Any 2 or more individuals may apply to OSCR for a SCIO to be constituted and for its entry in the Register.
- (2) The application must—
 - (a) state the name of the SCIO,
 - (b) state the proposed principal office of the SCIO,
 - (c) be accompanied by a copy of the SCIO's proposed constitution,
 - (d) contain such other information, and be accompanied by such other documents, as may be—
 - (i) required by regulations under section 6(1), or
 - (ii) otherwise required by OSCR.
- (3) OSCR may grant the application only if it considers that the SCIO, if constituted, would meet the charity test.
- (4) OSCR must refuse the application if—
 - (a) it considers that the SCIO's proposed name falls within section 10,
 - (b) the SCIO's proposed constitution does not comply with one or more of the requirements of section 50 and any regulations made under that section, or
 - (c) the application must, by virtue of regulations under section 6(1), be refused,but must not otherwise refuse an application if it considers that the SCIO, if constituted, would meet the charity test.
- (5) Sections 4 and 5 do not apply in relation to an application under subsection (1).

55 Entry in Register

- (1) If OSCR grants an application under section 54(1) it must enter the SCIO to which the application relates in the Register.
- (2) On the entry in the Register being made in accordance with subsection (5), subsections (3) and (4) apply.
- (3) The SCIO becomes by virtue of this subsection a body corporate—
 - (a) whose constitution is that proposed in the application,

- (b) whose name is that specified in the constitution, and
 - (c) whose first members are the individuals who made the application.
- (4) All property for the time being vested in those individuals (or any of them) on trust for the charitable purposes of the SCIO (when constituted) vests by virtue of this subsection in the SCIO.
 - (5) The entry for the SCIO in the Register must (in addition to the matters required by section 3(3)) include—
 - (a) the date when the entry was made, and
 - (b) a note stating that the charity is constituted as a SCIO.
 - (6) OSCR must send a copy of the entry in the Register to the SCIO at its principal office.
 - (7) If a SCIO ceases to be a charity, it ceases to be a SCIO.

Conversion, amalgamation and transfer

56 Conversion of charity which is a company or registered friendly society: applications

- (1) The following may apply to OSCR to be converted into a SCIO, and for the SCIO's entry in the Register—
 - (a) a charity which is a company,
 - (b) a charity which is a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 (c. 12).
- (2) But such an application may not be made—
 - (a) by a company or registered society having a share capital if any of the shares are not fully paid up,
 - (b) by a company having only a single member.
- (3) Such an application is referred to in this section and sections 57 and 58 as an “application for conversion”.
- (4) Section 54(2) applies in relation to an application for conversion as it applies to an application for a SCIO to be constituted (but sections 4 and 5 do not apply in relation to an application for conversion).
- (5) In addition to the documents referred to in section 54(2), the application for conversion must be accompanied by—
 - (a) a copy of the resolution of the company or registered society that it be converted into a SCIO, and
 - (b) a copy of the resolution of the company or registered society adopting the proposed constitution of the SCIO.
- (6) The resolution referred to in subsection (5)(a) must be—
 - (a) a special resolution of the company or registered society, or
 - (b) a unanimous written resolution signed by or on behalf of all the members of the company or registered society who would be entitled to vote on a special resolution.
- (6A) In the case of a company which is registered under the Companies Act 2006 in Scotland, Chapter 3 of Part 3 of that Act (resolutions and agreements affecting a company’s constitution) does not apply to the resolutions mentioned in subsection (5)(a) and (b).

- (7) In the case of a registered society, “special resolution” has the meaning given in section 113(2) of the Co-operative and Community Benefit Societies Act 2014 .

57 Determination of application for conversion

- (1) Before determining an application for conversion, OSCR must consult—
- (a) the appropriate registrar, and
 - (b) such other persons as it thinks fit,
- about whether the application should be granted.
- (2) OSCR may grant an application for conversion only if it considers that the charity, if converted into a SCIO as proposed, would continue to meet the charity test.
- (3) OSCR must refuse an application for conversion if—
- (a) it considers that the SCIO's proposed name falls within section 10,
 - (b) the SCIO's proposed constitution does not comply with one or more of the requirements of section 50 and any regulations made under that section, or
 - (c) the application must, by virtue of regulations under section 6(1), be refused.
- (4) If OSCR considers that a charity, if converted into a SCIO as proposed in an application for conversion, would continue to meet the charity test, OSCR may refuse the application on grounds other than those set out in subsection (3) only if it is satisfied by any representations received from those whom it consulted under subsection (1) that such a refusal would be appropriate.

58 Conversion: supplementary

- (1) If OSCR grants an application for conversion, it must—
- (a) enter the SCIO in the Register,
 - (b) send to the appropriate registrar a copy of each of the resolutions of the converting company or registered society referred to in section 56(5) and a copy of the entry in the Register relating to the SCIO, and
 - (c) once the SCIO's constitution as a SCIO has taken effect, remove from the Register the entry for the converting company or registered society.
- (2) The entry for the SCIO in the Register must, for so long as its constitution as a SCIO has not yet taken effect, include a note stating that fact.
- (3) If the appropriate registrar—
- (a) registers the documents sent under subsection (1)(b), and
 - (b) cancels the registration of the company under the Companies Act 2006, or of the society under the Co-operative and Community Benefit Societies Act 2014 (c. 12),
- subsections (4) and (5) apply.
- (4) The company or registered society is by virtue of this subsection converted into a SCIO, being a body corporate—
- (a) whose constitution is that proposed in the application for conversion,
 - (b) whose name is that specified in the constitution, and

- (c) whose first members are the members of the converting company or society immediately before the moment of conversion.
- (5) All property, rights and liabilities of the converting company or registered society become by virtue of this subsection the property, rights and liabilities of the SCIO.
- (6) The entry for the SCIO in the Register must include—
 - (a) a note stating that the charity is constituted as a SCIO,
 - (b) the date on which it became so constituted, and
 - (c) a note of the name of the company or society which was converted into the SCIO.
- (7) In section 57 and in this section, the “appropriate registrar” means—
 - (a) in the case of an application for conversion by a company, the registrar of companies,
 - (b) in the case of an application for conversion by a registered society, the Financial Conduct Authority.

59 Amalgamation of SCIOs

- (1) Any 2 or more SCIOs (“the old SCIOs”) may, in accordance with this section, apply to OSCR to be amalgamated, and for a new SCIO (“the new SCIO”) to be constituted and entered in the Register as their successor.
- (2) Such an application is referred to in this section and section 60 as an “application for amalgamation”.
- (3) Subsections (2) to (4) of section 54 apply in relation to an application for amalgamation as they apply to an application for a SCIO to be constituted, but with references to the SCIO being read as references to the new SCIO (but sections 4 and 5 do not apply in relation to an application for amalgamation).
- (4) In addition to the documents and information referred to in section 54(2), the application for amalgamation must be accompanied by—
 - (a) a copy of a resolution of each of the old SCIOs approving the proposed amalgamation, and
 - (b) a copy of a resolution of each of the old SCIOs adopting the proposed constitution of the new SCIO.
- (5) The resolutions must be passed—
 - (a) by a two-thirds majority of those voting at a general meeting of the SCIO (including those voting by proxy or by post, if voting that way is permitted), or
 - (b) unanimously by the SCIO's members, otherwise than at a general meeting.

60 Amalgamation: supplementary

- (1) If OSCR grants an application for amalgamation, it must—
 - (a) enter the new SCIO in the Register, and
 - (b) remove from the Register the entries for the old SCIOs.
- (2) On the new SCIO being entered in the Register it becomes by virtue of this section a body corporate—

- (a) whose constitution is that proposed in the application for amalgamation,
 - (b) whose name is that specified in the constitution, and
 - (c) whose first members are the members of the old SCIOs immediately before the new SCIO was entered in the Register.
- (3) On the removal of the old SCIOs from the Register—
- (a) all the property, rights and liabilities of each of the old SCIOs become by virtue of this subsection the property, rights and liabilities of the new SCIO, and
 - (b) each of the old SCIOs is dissolved.
- (4) The entry for the new SCIO in the Register must include—
- (a) a note stating that it is constituted as a SCIO,
 - (b) the date on which it became so constituted, and
 - (c) a note that it was constituted following amalgamation, and of the name of each of the old SCIOs.
- (5) OSCRC must send a copy of the entry in the Register to the new SCIO at its principal office.

61 Transfer of SCIO's undertaking

- (1) A SCIO may resolve that all its property, rights and liabilities should be transferred to another SCIO specified in the resolution.
- (2) Where a SCIO has passed such a resolution, it must send to OSCRC—
- (a) a copy of the resolution, and
 - (b) a copy of a resolution of the transferee SCIO agreeing to the transfer to it.
- (3) A resolution referred to in subsections (1) and (2)(b) must be passed—
- (a) by a two-thirds majority of those voting at a general meeting of the SCIO (including those voting by proxy or by post, if voting that way is permitted), or
 - (b) unanimously by the SCIO's members, otherwise than at a general meeting.
- (4) The resolution referred to in subsection (1) does not take effect until confirmed by OSCRC.
- (5) If OSCRC confirms the resolution—
- (a) all the property, rights and liabilities of the transferor SCIO become by virtue of this subsection the property, rights and liabilities of the transferee SCIO in accordance with the resolution,
 - (b) the transferor SCIO is dissolved, and
 - (c) OSCRC must remove from the Register the entry for the transferor SCIO.

General

62 Third parties

- (1) A person dealing with a SCIO in good faith and for value is not concerned to inquire whether—
- (a) anything in the SCIO's constitution prevents it acting in the way that it is, or

- (b) any constitutional limitations on the powers of the SCIO's charity trustees prevent them from binding the SCIO or authorising others to do so.
- (2) Nothing in subsection (1) prevents a person from bringing proceedings for interdict in respect of the doing of an act which—
 - (a) the SCIO, because of anything in its constitution, does not have power to do, or
 - (b) the SCIO's charity trustees, because of any constitutional limitations on their powers, do not have power to do.
- (3) But no such proceedings may be brought in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the SCIO.
- (4) Subsection (3) does not prevent OSCR from exercising any of its powers.
- (5) Nothing in subsection (1)(b) affects any liability incurred by the SCIO's charity trustees (or any of them) for doing anything which, because of any constitutional limitations on their powers, the trustees (or that trustee) do not have power to do.
- (6) Nothing in subsection (1) absolves the SCIO's charity trustees from their duty to act within the SCIO's constitution and in accordance with any constitutional limitations on their powers.
- (7) In this section “constitutional limitations” on the powers of a SCIO's charity trustees are limitations on their powers under its constitution, including limitations deriving from a resolution of the SCIO in general meeting, or from an agreement between the SCIO's members.

63 Amendment of constitution

- (1) A SCIO may by resolution of its members amend its constitution (and a single resolution may provide for more than one amendment).
- (2) Such a resolution must be passed—
 - (a) by a two-thirds majority of those voting at a general meeting of the SCIO (including those voting by proxy or by post, if voting that way is permitted), or
 - (b) unanimously by the SCIO's members, otherwise than at a general meeting.
- (3) The date of passing of such a resolution is—
 - (a) the date of the general meeting at which it was passed, or
 - (b) if it was passed otherwise than at a general meeting, the date on which the last member agreed to it.

64 Regulations relating to SCIOs

- (1) The Scottish Ministers may by regulations make further provision in relation to SCIOs including, in particular, provision about—
 - (a) applications for constitution as, or conversion into, a SCIO, the determination of applications, entry in the Register and the effect of such entry,
 - (b) the administration of a SCIO,
 - (c) amalgamation of SCIOs and transfer of a SCIO's property, rights and liabilities to another SCIO,
 - (d) the winding up, insolvency or dissolution of a SCIO,

- (e) the maintenance of registers of information about SCIOs (for example, registers of members, of charity trustees or of charges over the SCIO's assets),
 - (f) such other matters in connection with the provision made by this Chapter as they think fit.
- (2) Regulations under subsection (1) may add to, replace or omit any part of the text of an Act (including this Act).

CHAPTER 7A

CHARITY MERGERS

64A Meaning of “charity merger” etc.

- (1) This section applies for the interpretation of sections 64B to 64E.
- (2) A “charity merger” means a scheme in which—
 - (a) either—
 - (i) all the property, rights and liabilities of one or more charities (a “transferor”) are transferred to another charity (the “transferee”), or
 - (ii) two or more charities (“transferors”) are amalgamated and all the property, rights and liabilities of both or all of them are transferred to a new charity (the “transferee”), and
 - (b) the transferor (or transferors) is (or are) wound up or dissolved, or is (or are) to be wound up or dissolved, in connection with the scheme.
- (3) A reference (however expressed) to—
 - (a) a transferor under a charity merger is a reference to a transferor within the meaning of subsection (2),
 - (b) a transferee under a charity merger is a reference to—
 - (i) the transferee within the meaning of subsection (2), if it is a company or other body corporate,
 - (ii) otherwise, the charity trustees of the transferee (within the meaning of subsection (2)).

64B Notification of charity mergers

- (1) A transferee under a charity merger must give OSCR notice of the merger as soon as reasonably practicable after all the property, rights and liabilities of the transferor (or of all of the transferors, where there is more than one) under the merger are transferred to the transferee.
- (2) A notice under subsection (1) must—
 - (a) include such documents and information, and
 - (b) be given in such form and manner,as OSCR may require.
- (3) OSCR must publicise any requirements set under subsection (2).

64C Record of charity mergers

- (1) OSCR must keep, in such manner as it thinks fit, a record of all charity mergers notified to it in accordance with section 64B.
- (2) The record of charity mergers must contain a separate entry for each charity merger setting out—
 - (a) the date of the recording of the merger in the record,
 - (b) any other information which OSCR considers appropriate in relation to the merger.
- (3) Section 22 applies to documents and information which OSCR requires in relation to an entry in the record of charity mergers which relates to a charity as it applies to documents and information which OSCR requires in relation to the charity's entry in the Register.
- (4) In this section and sections 64D and 64E, "the record of charity mergers" means the record kept under subsection (1).

64D Legacies: effect of charity merger being recorded

- (1) This section applies where—
 - (a) a person (the "testator") by will bequeaths a legacy to a charity,
 - (b) the charity to which the legacy is bequeathed becomes a transferor under a charity merger,
 - (c) the charity does not acquire a vested right in the legacy by reason only of the charity having wound up or dissolved in connection with the merger, and
 - (d) the merger is recorded in the record of charity mergers before the date on which the charity would, but for the merger, have acquired such a vested right.
- (2) The transferee under the merger is entitled to receive the legacy unless it is clear from the terms of the will that the testator intended otherwise.
- (3) Without prejudice to the generality of subsection (2)—
 - (a) it is to be regarded as clear from the terms of the will that the testator intended otherwise if the will provides expressly that the legacy is not to be paid to a transferee under a charity merger,
 - (b) it is not to be regarded as clear from the terms of the will that the testator intended otherwise only by reason of the will providing that the legacy is bequeathed—
 - (i) to the charity, which failing to another person (or persons),
 - (ii) to the charity and another person (or persons) and to whichever of them is still in existence or, as the case may be, is the survivor (or survivors) of them.
- (4) Where the legacy is bequeathed to more than one person, the share of it which the transferee is entitled to receive is the share which the transferor would have received had it not been for the charity merger.
- (5) Subsection (6) applies where—
 - (a) the transferee becomes the transferor under a further charity merger which is recorded in the record of charity mergers,

- (b) that recording occurs before the date on which, but for the further merger, the transferee would have become entitled to receive the legacy by virtue of subsection (2).
- (6) The transferee under the further merger is entitled to receive the legacy (and so on).
- (7) In this section, a “will” means any document of a testamentary nature and includes a reference to—
 - (a) a testamentary trust disposition and settlement,
 - (b) a codicil.

64E Public access to the record of charity mergers

- (1) OSCR must make the record of charity mergers available for public inspection—
 - (a) at all reasonable times at its principal office,
 - (b) at such other places as it thinks fit, and
 - (c) otherwise as it thinks fit.
- (2) It is for OSCR to determine the form and manner in which the record of charity mergers is made available; but in doing so OSCR must ensure that the information in the record is made reasonably obtainable.
- (3) OSCR must publicise the arrangements which it makes in pursuance of subsection (1).

CHAPTER 8

RELIGIOUS CHARITIES

65 Designated religious charities

- (1) OSCR may designate as a designated religious charity a charity which appears to it to have—
 - (a) the advancement of religion as its principal purpose,
 - (b) the regular holding of public worship as its principal activity,
 - (c) been established in Scotland for at least 10 years,
 - (d) a membership of at least 3,000 persons who are—
 - (i) resident in Scotland, and
 - (ii) at least 16 years of age, and
 - (e) an internal organisation such that—
 - (i) one or more authorities in Scotland exercise supervisory and disciplinary functions in respect of the component elements of the charity, and
 - (ii) those elements are subject to requirements as to keeping accounting records and audit of accounts which appear to OSCR to correspond to those required by section 44.
- (2) OSCR may determine that subsection (1)(c) need not be satisfied in the case of a charity—
 - (a) created by the amalgamation of 2 or more charities each of which, immediately before the amalgamation—
 - (i) was a designated religious charity, or

- (ii) was, in OSCR's opinion, eligible for designation as such, or
- (b) constituted by persons who have removed themselves from membership of a charity which, immediately before the removal—
 - (i) was a designated religious charity, or
 - (ii) was, in OSCR's opinion, eligible for designation as such.
- (3) The provisions set out in subsection (4) do not apply to—
 - (a) a designated religious charity,
 - (b) any component element of a designated religious charity which is itself a charity (whether or not having as its principal purpose the advancement of religion).
- (4) Those provisions are—
 - subsections (1) and (6) of section 16 (in so far as those subsections relate to any action set out in subsection (2)(b) to (d) of that section),
 - section 28(3),
 - section 30B,**
 - section 31(4) and (6),
 - section 34(5)(c) to (e),
 - section 69.
- (5) OSCR may, by notice served on a designated religious charity, withdraw the designation of the charity as such where—
 - (a) it appears to OSCR that one or more of paragraphs (a) to (e) of subsection (1) is no longer satisfied in relation to the charity, or
 - (b) in consequence of an investigation of any component element of the charity under section 28, OSCR has given a direction under section 31(5) in relation to the component element and considers that it is no longer appropriate for the charity to be a designated religious charity.

CHAPTER 9

~~CHARITY TRUSTEES~~

CHARITY TRUSTEES AND SENIOR MANAGERS

General duties

66 Charity trustees: general duties

- (1) A charity trustee must, in exercising functions in that capacity, act in the interests of the charity and must, in particular—
 - (a) seek, in good faith, to ensure that the charity acts in a manner which is consistent with its purposes,
 - (b) act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person, and
 - (c) in circumstances capable of giving rise to a conflict of interest between the charity and any person responsible for the appointment of the charity trustee—
 - (i) put the interests of the charity before those of the other person, or

- (ii) where any other duty prevents the charity trustee from doing so, disclose the conflicting interest to the charity and refrain from participating in any deliberation or decision of the other charity trustees with respect to the matter in question.
- (2) The charity trustees of a charity must ensure that the charity complies with any direction, requirement, notice or duty imposed on it by virtue of this Act.
- (3) Subsections (1) and (2) are without prejudice to any other duty imposed by enactment or otherwise on a charity trustee in relation to the exercise of functions in that capacity.
- (4) Any breach of the duty under subsection (1) or (2) is to be treated as being misconduct in the administration of the charity.
- (5) All charity trustees must take such steps as are reasonably practicable for the purposes of ensuring—
 - (a) that any breach of a duty under subsection (1) or (2) is corrected by the trustee concerned and not repeated, and
 - (b) that any trustee who has been in serious or persistent breach of either or both of those duties is removed as a trustee.

Information about charity trustees

66A Schedule of charity trustees

- (1) OSCR must keep, in such manner as it thinks fit, a schedule of all charity trustees.
- (2) The schedule must contain a separate entry for each charity trustee entered in it setting out such information as OSCR considers appropriate.
- (3) OSCR must—
 - (a) specify the questions about charity trustees it will require answers to for the purpose of populating the schedule, and
 - (b) publicise the questions so specified.
- (4) Section 22 applies to documents and information which OSCR requires in relation to a charity trustee's entry in the schedule as it applies to documents and information which OSCR requires in relation to the charity's entry in the Register.
- (5) It does not matter whether a person continues to be a charity trustee for OSCR to be able to retain information about that person in the schedule, provided the retention of that information is calculated to facilitate, or is conducive or incidental to, the performance of OSCR's functions.

Remuneration

67 Remuneration for services

- (1) A charity trustee may not be remunerated for services provided to the charity (including services provided in the capacity as a charity trustee or under a contract of employment) unless subsection (2) entitles the trustee to be so remunerated.
- (2) Where a charity trustee of a charity—
 - (a) provides services to or on behalf of the charity, or

~~(b) might benefit from any remuneration for the provision of such services by a person with whom the trustee is connected;~~

(b) is connected with a person who provides such services,

the person providing the services (the “service provider”) is entitled to be remunerated from the charity's funds for doing so only if the conditions set out in subsection (3) are met.

- (3) Those conditions are—
 - (a) that the maximum amount of the remuneration—
 - (i) is set out in a written agreement between the service provider and the charity (or, as the case may be, its charity trustees) under which the service provider is to provide the services in question, and
 - (ii) is reasonable in the circumstances,
 - (b) that, before entering into the agreement, the charity trustees were satisfied that it would be in the interests of the charity for those services to be provided by the service provider for that maximum amount,
 - (c) that, immediately after entering into the agreement, less than half of the total number of charity trustees of the charity fall within subsection (4), and
 - (d) that the charity's constitution does not contain any provision which expressly prohibits the service provider from receiving the remuneration.
- (4) A charity trustee falls within this subsection if the trustee is—
 - (a) party (in the capacity of a service provider) to a written agreement of the type described in subsection (3)(a)(i) under which any obligation is still to be fully discharged,
 - (b) entitled to receive remuneration from the charity's funds otherwise than by virtue of such an agreement, or
 - (c) connected with any other ~~charity trustee who falls within sub-paragraph (a) or (b)~~ person who is party to an agreement or entitled to receive remuneration as mentioned in paragraph (a) or (b).
- (5) Nothing in subsections (1) or (2) prevents a charity trustee or other service provider from receiving any remuneration from a charity's funds which that service provider is entitled to receive by virtue of—
 - (a) any authorising provision of the charity's constitution which was in force on 15 November 2004,
 - (b) an order made by the Court of Session, or
 - (c) this Act or any other enactment.
- (6) For the purposes of subsection (5)(a), an “authorising provision” is a provision which refers specifically to the payment of remuneration—
 - (a) to the service provider concerned,
 - (b) where that service provider is a charity trustee, to a charity trustee, or
 - (c) where that service provider is connected to a charity trustee, to any person so connected.

- (7) Where a charity trustee or other service provider is remunerated in contravention of this section, the charity may recover the amount of remuneration; and proceedings for its recovery must be taken if OSCR so directs.

68 Remuneration: supplementary

- (1) In section 67—
- “benefit” means any direct or indirect benefit,
 - “maximum amount”, in relation to remuneration, means the maximum amount of the remuneration whether specified in or ascertainable under the terms of the agreement in question,
 - “remuneration” includes any benefit in kind (and “remunerated” is to be construed accordingly),
 - “services” includes goods that are supplied in connection with the provision of services.
- (2) For the purposes of that section, the following persons are “connected” with a charity trustee—
- (a) any person—
 - (i) to whom the trustee is married,
 - (ii) who is the civil partner of the trustee, or
 - (iii) with whom the trustee is living as husband and wife or, where the trustee and the other person are of the same sex, in an equivalent relationship,
 - (b) any child, parent, grandchild, grandparent, brother or sister of the trustee (and any spouse or civil partner of any such person),
 - (c) any institution which is controlled (whether directly or through one or more nominees) by—
 - (i) the charity trustee,
 - (ii) any person with whom the charity trustee is connected by virtue of paragraph (a), (b), (d) or (e), or
 - (iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together,
 - (d) a body corporate in which—
 - (i) the charity trustee has a substantial interest,
 - (ii) any person with whom the charity trustee is connected by virtue of paragraph (a), (b), (c) or (e) has a substantial interest, or
 - (iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together, have a substantial interest,
 - (e) a Scottish partnership in which one or more of the partners is—
 - (i) the charity trustee, or
 - (ii) a person with whom the charity trustee is, by virtue of paragraph (a) or (b), connected.
- (3) For the purposes of subsection (2) a person who is—

- (a) another person's stepchild, or
- (b) brought up or treated by another person as if the person were a child of the other person,

is to be treated as that other person's child.

- (4) Section 105 sets out when a person is to be treated as being in control of an institution or as having a substantial interest in a body corporate.

68A Charity trustees' indemnity insurance

- (1) The charity trustees of a charity may arrange for the purchase, from the charity's funds, of insurance designed to indemnify the charity trustees against personal liability in respect of any negligence, default or breach of duty committed by them in their capacity as—
 - (a) charity trustees, or
 - (b) directors or officers of any body corporate carrying on any activities on behalf of the charity.
- (2) The terms of such insurance must, however, be framed to exclude the provision of any indemnity for a charity trustee in respect of any liability incurred by the charity trustee—
 - (a) to pay—
 - (i) a fine imposed in criminal proceedings,
 - (ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature,
 - (b) in respect of representation in any criminal proceedings in which the charity trustee is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by the charity trustee,
 - (c) to the charity that arises out of any conduct which the charity trustee knew (or must reasonably be assumed to have known) was not in the interests of the charity or in the case of which the charity trustee did not care whether it was in the interests of the charity or not.
- (3) For the purposes of subsection (2)(b) the reference to conviction does not include a conviction—
 - (a) quashed by an order under section 118(1)(b) or 183(1)(c) of the Criminal Procedure (Scotland) Act 1995 (c. 46),
 - (b) quashed by an order under section 118(1)(c) of that Act and which order has the effect of an acquittal by virtue of section 119(9) of that Act or otherwise,
 - (c) in relation to which the verdict is set aside by an order under section 183(1)(d) of that Act and which order has the effect of an acquittal by virtue of section 185(9) of that Act or otherwise.
- (4) This section—
 - (a) does not authorise the purchase of any insurance whose purchase is expressly prohibited by the charity's constitution,
 - (b) has effect despite any provision prohibiting the charity trustees receiving any personal benefit from the charity's funds.

Disqualification

69 Disqualification from being charity trustee

- (1) The persons specified in subsection (2) are disqualified from being charity trustees (**but see also subsection (2A)**).
- (2) Those persons are any person who—
 - (a) has been convicted of—
 - (ai) **an offence specified in section 69A,**
 - (i) **an offence, not specified in section 69A, involving dishonesty,**
 - ~~(ii) an offence under this Act,~~
 - (b) is—
 - (i) **an undischarged bankrupt (see section 70(3)),**
 - (ii) **subject to a specified bankruptcy-related measure (see section 70(4)),**
 - (c) has been removed, under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) or section 34 of this Act, from being concerned in the management or control of any body,
 - ~~(d) has been removed from the office of charity trustee or trustee for a charity by an order made—~~
 - ~~(i) by the Charity Commission for England and Wales under section 79(2)(a) of the Charities Act 2011 or section 18(2)(i) of the Charities Act 1993 or by the Charity Commissioners for England and Wales, whether under section 18(2)(i) of the 1993 Act or under section 20(1A)(i) of the Charities Act 1960 (c. 58) or section 20(1) of that Act (as in force before the commencement of section 8 of the Charities Act 1992 (c. 41)), or~~
 - ~~(ii) by Her Majesty's High Court of Justice in England,~~~~—on the grounds of any misconduct in the administration of the charity for which the person was responsible or to which the person was privy, or which the person's conduct contributed to or facilitated,~~
 - (d) **has been removed as a trustee, charity trustee, officer, agent or employee of a charity by a relevant order in England and Wales (see section 70(5)(a)),**
 - (da) **has been removed from the office of charity trustee or trustee for a charity by a relevant order in Northern Ireland (see section 70(5)(b)),**
 - (db) **is subject to an order made by the Charity Commission for England and Wales under section 181A of the Charities Act 2011 disqualifying the person in relation to all charities,**
 - (e) is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I.2002/3150),
 - (f) **has been found to be in contempt of court by a court in England or Wales in civil proceedings for making a false disclosure statement, or making a false statement in a document verified by a statement of truth, or causing (in either case) such a statement to be made,**
 - (g) **has been found guilty of disobedience to—**

- (i) an order or direction of the Charity Commission for England and Wales on an application to the High Court of Justice in England and Wales under section 336(1) of the Charities Act 2011,
 - (ii) an order of the Charity Commission for Northern Ireland on an application to the High Court of Justice in Northern Ireland under section 174 of the Charities Act (Northern Ireland) 2008,
 - (h) is a designated person for the purposes of—
 - (i) regulations 8 to 12 of the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/466),
 - (ii) regulations 11 to 15 of the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/573),
 - (iii) regulations 11 to 15 of the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/577),
 - (i) is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.
- (2A) Where—
- (a) a person is subject to an order made by the Charity Commission for England and Wales under section 181A of the Charities Act 2011, and
 - (b) the order disqualifies the person in relation to a particular charity or type of charity, the person is also disqualified from being a charity trustee in relation to that charity or type of charity.
- (3) A person referred to in subsection (2)(a) is not disqualified under subsection (1) by reason of a conviction if the conviction is spent by virtue of the Rehabilitation of Offenders Act 1974 (c. 53).
- (3A) A person referred to in subsection (2)(f) is not disqualified under subsection (1) by reason of a finding of contempt which, if it had been a conviction for which the person was dealt with in the same way, would be a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974.
- (4) OSCR may, on the application of a person disqualified under subsection (1) or (2A), waive the disqualification either generally or in relation to a particular charity or type of charity.
- (5) OSCR must notify a waiver under subsection (4) to the person concerned.
- (6) OSCR must not grant a waiver under subsection (4) if to do so would prejudice the operation of the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I.2002/3150).
- (7) The Scottish Ministers may by regulations—
- (a) modify this section so as to add or remove a person, or a description of a person, to or from the persons for the time being mentioned in or falling within this section as a person who is disqualified from being a charity trustee,
 - (b) modify the definitions in section 70 as Ministers consider appropriate in consequence of any modification of this section or otherwise.

69A Disqualification: specified offences

- (1) The following offences are specified for the purposes of section 69(2)(a)(ai)—
 - (a) an offence under this Act,
 - (b) an offence under section 77 of the Charities Act 2011 (offence of contravening certain orders),
 - (c) an offence under section 13 or 19 of the Terrorism Act 2000 (wearing of uniform etc, and failure to disclose information),
 - (d) an offence specified under section 41 or 42 of the Counter-Terrorism Act 2008 as an offence to which Part 4 of that Act applies,
 - (e) a money laundering offence within the meaning of section 415 of the Proceeds of Crime Act 2002,
 - (f) an offence under any of the following provisions of the Bribery Act 2010—
 - (i) section 1 (bribing another person),
 - (ii) section 2 (offences related to being bribed),
 - (iii) section 6 (bribery of foreign public officials),
 - (iv) section 7 (failure of commercial organisations to prevent bribery),
 - (g) an offence of perverting the course of justice (by whatever means and however the offence is described), including in particular—
 - (i) false accusation of a crime,
 - (ii) perjury,
 - (iii) prevarication on oath,
 - (iv) prison breaking,
 - (v) subornation of perjury,
 - (h) an offence of wilful neglect of duty by a public official,
 - (i) an offence, under the law of England and Wales, of misconduct in public office.
- (2) An offence which has been superseded (whether directly or indirectly) by any offence specified in subsection (1) is also specified for the purposes of section 69(2)(a)(ai).
- (3) In relation to an offence specified in subsection (1) or (2), the following offences are also specified for the purposes of section 69(2)(a)(ai)—
 - (a) an offence committed by aiding, abetting, counselling, procuring or inciting the commission of the offence,
 - (b) an offence committed by attempting or conspiring to commit the offence.
- (4) The Scottish Ministers may by regulations modify this section to add or remove an offence.

69B Disqualification from holding office with senior management functions

- (1) While a person is disqualified by virtue of section 69 from acting as a charity trustee in relation to a charity, the person is also disqualified from holding an office or employment with senior management functions in the charity.

- (2) But where a person is disqualified by virtue of section 69 from acting as a charity trustee in relation to a charity by reason of an order made by the Charity Commission for England and Wales under section 181A of the Charities Act 2011, the person is not disqualified under subsection (1) to the extent that the order does not apply—
 - (a) in relation to holding an office or employment with senior management functions in a charity, or
 - (b) in relation to a particular office or employment or to any office or employment of a particular description.
- (3) OSCR may, on the application of a person disqualified under subsection (1), waive the disqualification either generally or in relation to a particular charity or type of charity.
- (4) A waiver under subsection (3) may relate to a particular office or employment or to any office or employment of a particular description.
- (5) OSCR must notify a waiver under subsection (3) to the person concerned.
- (6) A function of an office or employment held by a person (“P”) is a senior management function if—
 - (a) it relates to the management of the charity, and P is not responsible for it to another officer or employee (other than a charity trustee), or
 - (b) it involves control over money and the only officer or employee (other than a charity trustee) to whom P is responsible for it is a person holding an office or employment with senior management functions other than ones involving control over money.

70 Disqualification: supplementary

- (1) A person who acts as a charity trustee while disqualified by virtue of section 69, or (as the case may be) holds an office or employment with senior management functions in the charity while disqualified by virtue of section 69B, is guilty of an offence and liable—
 - (a) on summary conviction, to imprisonment for a period not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both,
 - (b) on conviction on indictment, to imprisonment for a period not exceeding 2 years or a fine or both.
- ~~(2) Any acts done as a charity trustee by a person disqualified by virtue of section 69 from being a charity trustee are not invalid by reason only of the disqualification.~~
- (2) Any acts done—
 - (a) as a charity trustee by a person disqualified by virtue of section 69 from being a charity trustee, or
 - (b) by a person holding an office or employment with senior management functions in a charity while disqualified by virtue of section 69B from holding such an office or employment in the charity,
 are not invalid by reason only of the disqualification.
- (3) In ~~section 69(2)(b)~~ section 69(2)(b)(i), “undischarged bankrupt” means a person—
 - (a) whose estate has been sequestrated, who has been adjudged bankrupt or who has granted a trust deed for or entered into an arrangement with creditors, and
 - (b) who has not been discharged under or by virtue of—

- (i) section 137, 138 or 140 of the Bankruptcy (Scotland) Act 2016 ,
 - (iii) section 279 or 280 of the Insolvency Act 1986 (c. 45), or
 - (iv) any other enactment or rule of law subsisting at the time of the person's discharge.
- (4) For the purpose of section 69(2)(b)(ii), “specified bankruptcy-related measure” means—
- (a) a bankruptcy restrictions order, interim order or undertaking under the Bankruptcy (Scotland) Act 2016, the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989,
 - (b) a debt relief restrictions order, interim order or undertaking under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (SI 1989/2405),
 - (c) a moratorium period under a debt relief order under either of those enactments.
- (5) For the purposes of section 69(2)(d) and (da), a “relevant order” is—
- (a) in England and Wales, an order made—
 - (i) by the Charity Commission for England and Wales under section 79(4) of the Charities Act 2011 or by the Commission or the Charity Commissioners for England and Wales under a relevant earlier enactment, or
 - (ii) by the High Court of Justice in England and Wales,
 on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible, or which the person knew of and failed to take any reasonable step to oppose, or which the person's conduct contributed to or facilitated,
 - (b) in Northern Ireland, an order made—
 - (i) by the Charity Commission for Northern Ireland under section 33(2)(i) of the Charities Act (Northern Ireland) 2008, or
 - (ii) by the High Court of Justice in Northern Ireland,
 on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible, or to which the person was privy, or which the person's conduct contributed to or facilitated.
- (6) In subsection (5)(a), a “relevant earlier enactment” means—
- (a) section 79(2)(a) of the Charities Act 2011 (as in force before the commencement of sections 4 and 9 of the Charities (Protection and Social Investment) Act 2016),
 - (b) section 18(2)(i) of the Charities Act 1993 (power to act for protection of charities),
 - (c) section 20(1A)(i) of the Charities Act 1960, or
 - (d) section 20(1)(i) of the 1960 Act (as in force before the commencement of section 8 of the Charities Act 1992).

70ZA Record of persons removed from office

- (1) OSCR must keep, in such manner as it thinks fit, a record of all persons who have been removed, by order of the Court of Session under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 or section 34 of this Act, from being concerned in the management or control of any body.

- (2) The record must contain a separate entry for each person entered in it setting out—
 - (a) the person’s name,
 - (b) the date of the order of the Court of Session removing the person from being concerned in the management or control of the body,
 - (c) the name of the body to which the order relates,
 - (d) if the person has been granted a waiver under section 69(4) in relation to a particular charity or type of charity only, or has been granted a waiver under section 69B(3), the details of the waiver including—
 - (i) the date OSCR notified the person of the waiver, and
 - (ii) the extent of the waiver, and
 - (e) any other information which OSCR considers appropriate in relation to—
 - (i) the person,
 - (ii) the body from which the person was removed.
- (3) Despite subsection (1)—
 - (a) OSCR must remove a person from the record if the person has been granted a general waiver under section 69(4),
 - (b) OSCR may remove a person from the record if the person has died.

70ZB Searching the record of removed persons

- (1) OSCR must provide a facility by which the record kept under section 70ZA(1) may be searched by any person.
- (2) That search facility must allow the record to be searched by reference to, and only by reference to, a person’s name.
- (3) Where, on an application being made to it, OSCR is satisfied that disclosing an entry in the record is likely to jeopardise the safety or security of any person or premises, OSCR must ensure that the entry is not disclosed to any person searching the record.
- (4) OSCR may also determine other information which, though contained in the record, is not to be disclosed to any person searching it.

Appointment

70A Appointment of charity trustees

- ~~(1) Subsection (2) applies where—

 - ~~(a) a charity has an insufficient number of charity trustees to be able to appoint a charity trustee under its constitution, and~~
 - ~~(b) the constitution does not provide a mechanism for appointing a charity trustee in such circumstances.~~~~
- ~~(2) OSCR may, upon the request of—

 - ~~(a) the majority of the charity trustees of a charity,~~
 - ~~(b) if there are only two charity trustees, either of them,~~
 —appoint a person as an acting charity trustee for the charity.~~

- (1) OSCRC may, on the request of a charity, appoint a person as an interim charity trustee for the charity where—
 - (a) the charity has an insufficient number of charity trustees to be able to appoint a charity trustee under its constitution, and
 - (b) the charity's constitution does not provide a mechanism for appointing a charity trustee in such circumstances.
- (2) OSCRC may, of its own accord or on the representation of any person, appoint a person as an interim charity trustee for a charity where OSCRC is satisfied that—
 - (a) the charity has no existing charity trustees,
 - (b) all of the charity's existing charity trustees either—
 - (i) cannot be found, or
 - (ii) are not acting and are not expected to resume acting, or
 - (c) the number of the charity's existing charity trustees who fall within sub-paragraph (i) or (ii) of paragraph (b) is such that the charity is unable to make a request under subsection (1).
- (3) OSCRC may appoint more than one **acting interim** charity trustee under subsection (1) or (2), but only as many as is necessary for the charity to be able to appoint charity trustees under its constitution **without requiring involvement from charity trustees who cannot be found or are not acting**.
- (4) A person appointed as an **acting interim** charity trustee under subsection (1) or (2)—
 - (a) is appointed for the period of 12 months (or such shorter period as OSCRC thinks fit) starting with the date of appointment, and
 - (b) has the same functions as a charity trustee appointed under the charity's constitution.
- (5) Despite subsection (4)(a), if—
 - (a) at the end of the period mentioned in that subsection, the charity is **still** not (but for the **acting interim** charity trustee) able to appoint a charity trustee under its constitution **without requiring involvement from charity trustees who cannot be found or are not acting**, and
 - (b) OSCRC, the majority of the charity trustees (or if only two trustees, either of them) and the **acting interim** charity trustee agree to an extension,

an **acting interim** charity trustee's period of appointment may be extended by one period of up to three months starting with the expiry of the original period of appointment.
- (5A) **For the purpose of subsection (5)(b), no account is to be taken of any charity trustees who cannot be found or are not acting.**
- (6) Nothing in subsections (1) to (5) prevents a person appointed as an **acting interim** charity trustee by OSCRC under subsection (1) or (2) from being appointed as a charity trustee by the charity under its constitution.
- (7) But the **acting interim** charity trustee may not vote on whether to make such an appointment.
- (8) Where an **acting interim** charity trustee is appointed as a charity trustee under the charity's constitution, the person's appointment as an **acting interim** charity trustee comes to an end on the date of that subsequent appointment.
- (9) **For the purposes of subsection (1), a request is the request of a charity if it is from—**

- (a) the majority of the charity trustees of the charity, or
- (b) if there are only two charity trustees of the charity, either of them.

CHAPTER 10

DECISIONS: NOTICES, REVIEWS AND APPEALS

Preliminary

71 Decisions

This Chapter applies to any decision by OSCR (or by a person to whom OSCR's functions are delegated by virtue of section 38) to—

- (a) refuse an application for entry in the Register, including entry as a SCIO under section 55, 58 or 60,
- (b) refuse to disapply section ~~3(3)(b)~~ 3(3)(aa) or (b) in relation to a charity,
- ~~(c) give a direction under section 11(3),~~
- (c) refuse to consent to a charity changing name under section 11,
- (d) give a direction under section 12(2), (2A) or (3),
- (e) refuse to give a direction under section 12(2) or (2A),
- (f) refuse to consent to a charity taking any action set out in section 16(2),
- (g) give a direction under section 28(3),
- (h) make a requirement under section 29(1),
- (i) remove a charity from the Register under section 30(1) or (3),
- (ia) give a direction under section 30(1)(a),
- (ib) give a direction under section 30A(2),
- (ic) remove a charity from the Register under section 30A(4),
- (id) give a direction under section 30B(2),
- (j) suspend a person under section 31(4),
- (k) give a direction under section 31(5) or (8),
- (l) give a direction under section 31(6), (7) or (9),
- (m) refuse an application made for the purposes of section 39(1),
- (ma) refuse an application made for the purposes of section 43A,
- (mb) remove a charity from the Register under section 45A(3),
- (n) give a direction under section 53(2),
- (o) give a direction under section 67(7),
- (p) refuse to grant a waiver under section 69(4),
- (pa) refuse to grant a waiver under section 69B(3),
- (pb) refuse an application made for the purposes of section 70ZB(3),
- (q) refuse to designate a charity as a designated religious charity or designated national collector, or

- (r) withdraw the designation of a charity as a designated religious charity or designated national collector.

Notice and effect of decisions

72 Notice of decisions

- (1) Any person who makes a decision to which this Chapter applies must, as soon as reasonably practicable after doing so, give notice of it to the person specified in subsection (2) and, where the decision is made by a person to whom OSCRC's functions have been delegated by virtue of section 38, OSCRC.
- (2) That person is—
 - (a) in the case of a decision referred to in paragraph (a), (g), (id), (j), (k), (l), (n) ~~or (p)~~, (p), (pa) or (pb) of section 71, the **charity, body or person** in respect of whom the decision was made,
 - (b) in the case of a decision referred to in paragraph (e) of that section, the charity which requested OSCRC to conduct a review under section 12,
(ba) in the case of a decision referred to in paragraph (h) of section 71, the charity, body or person with regard to which OSCRC is making inquiries under section 28, and
 - (c) in the case of any other decision referred to in ~~that section~~ **section 71**, the charity in respect of which the decision was made.
- (3) A notice given under this section must—
 - (a) set out the decision,
 - (b) give the reasons for the decision, and
 - (c) where the notice is given to a person specified in subsection (2), advise the recipient of—
 - (i) the right to request OSCRC to review the decision, and
 - (ii) the period within which such a request must be made.
- (4) **For the purposes of subsection (2)(ba)—**
 - (a) **if OSCRC is making inquiries into a body in relation to a period in which the body was a charity, the notice must be given to the body,**
 - (b) **if the charity or (as the case may be) body to which notice is to be given has ceased to exist, the notice must be given, to the extent that it is reasonably practicable to do so—**
 - (i) **in the case of a charity, to each person who was a charity trustee of the charity immediately before it ceased to exist,**
 - (ii) **in the case of a body, to each person who appears to the person giving the notice to have been concerned in the management or control of the body immediately before it ceased to exist.**

73 Effect of decisions

- (1) Unless subsection (2) or (3) provides otherwise, a decision to which this Chapter applies (and any direction, requirement, suspension or other act in pursuance of such a decision) has effect from the day on which the notice required by section 72 is given.

- (2) A decision referred to in section 71(d), (i), (ia), (ib), (ic), (id), (mb), (o) or (r) (and any direction, requirement, suspension or other act in pursuance of such a decision) is of no effect unless and until the notice required by section 72 is given and—
 - (a) the period within which OSCR must, on request, review the decision expires without a request being made, or
 - (b) where OSCR, on a request made within that period, confirms the decision (with or without variations)—
 - (i) the period within which that decision by OSCR may be appealed under section 76 to the First-tier Tribunal expires without an appeal being made, or
 - (ii) where such an appeal is made, it is abandoned or finally determined (by the First-tier Tribunal or, as the case may be, the Upper Tribunal).
- (3) A decision referred to in section 71(h) (and any corresponding requirement) is of no effect unless and until ~~the notice~~ any notice required by section 72 is given and—
 - (a) the period within which OSCR must, on request, review the decision expires without a request being made, or
 - (b) where such a request is made, the date on which OSCR confirms the decision (with or without variations).

Reviews

74 Review of decisions

- (1) OSCR must, within 21 days of being requested to do so by a person given notice under section 72 of a decision to which this Chapter applies—
 - (a) review the decision,
 - (b) confirm, vary, reverse or revoke it, and
 - (c) give notice of its decision under paragraph (b) to the person who requested the review.
- (2) A notice under paragraph (c) of subsection (1) must set out OSCR's reasons for its decision under paragraph (b) of that section.
- (3) The duty in subsection (1) applies only if the request is made within 21 days of the notice under section 72 being given to the person making the request.
- (4) OSCR must publish any further procedures in accordance with which reviews are to be conducted.

Appeals

76 Appeals to the First-tier Tribunal

- (1) Where OSCR—
 - (a) confirms a decision under section 74(1), or
 - (b) reconfirms a decision under section 77(1),
 the decision (or, where OSCR varies the decision on confirming or reconfirming it, the decision as varied) may be appealed to the First-tier Tribunal.

- (2) A decision referred to in paragraph (g) or (h) of section 71 (whether or not confirmed with variations) may not, despite subsection (1)(a), be appealed to the First-tier Tribunal.
- (3) It is for the person whose request or, as the case may be, earlier appeal under this section caused OSCR to confirm or reconfirm the decision to make an appeal under subsection (1).
- (4) Such an appeal must be made within 28 days of the person entitled to appeal it being given notice of the confirmation or reconfirmation.
- (5) The First-tier Tribunal may—
 - (a) confirm a decision appealed to it,
 - (b) quash such a decision and direct OSCR to take such other action, if any, as the First-tier Tribunal thinks fit by such time as may be specified in the direction, or
 - (c) remit such a decision back to OSCR, together with the First-tier Tribunal’s reasons for doing so, for reconsideration.

77 Reconsideration of decision remitted to OSCR

- (1) OSCR must, within 14 days of a decision being remitted to it under section 76(5)(c)—
 - (a) reconsider the decision,
 - (b) confirm, vary, reverse or revoke it, and
 - (c) give notice of its decision under paragraph (b) to the person who appealed its earlier decision to the First-tier Tribunal .
- (2) That notice must set out OSCR's reasons for its decision under subsection (1)(b).

78 Appeals to Court of Session

- (2) Any decision of OSCR (or by a person to whom OSCR's functions are delegated by virtue of section 38) to suspend a person by notice under section 31(4) may be appealed by the person suspended to the Court of Session.
- (3) The Court of Session may—
 - (a) confirm the decision appealed to it, or
 - (b) quash the decision and direct OSCR (or the person to whom OSCR's functions are delegated by virtue of section 38, as the case may be) to take such action, if any, as the Court thinks fit by such time as may be specified in the direction.

[PARTS 2 & 3]

PART 4

GENERAL AND SUPPLEMENTARY

[Sections 96 – 99]

100 Notices, applications etc.

- (1) In this section, “formal communication” means—
 - (a) any notice, notification, direction or consent given, or

- (b) any request for review, proposal, application (other than an application to a court), report or decision made,
- under or for the purposes of this Act.
- (2) A formal communication must be made in writing.
- (3) A formal communication which is sent by electronic means is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.
- (4) A formal communication is given to or made to a person if it is—
- (a) delivered to the person,
 - (b) sent by post in a prepaid registered letter, or by the recorded delivery service, addressed—
 - (i) where the person is a charity, to the charity at the principal office set out in its entry in the Register or to the charity trustee whose name is so set out at the address so set out,
 - (ii) where the person is an incorporated company or body (other than a charity), to the secretary, chief clerk or chief executive of the company or body at its registered or principal office,
 - (iii) where the person is a public office-holder, to the office-holder at the office-holder's principal office,
 - (iv) in any other case, to the person at that person's usual or last known place of abode, or
 - (c) sent to the person in some other manner (including by electronic means) which the sender considers likely to cause it to be delivered on the same or next day.
- (5) Where a charity's entry in the Register does not, because of subsection (4) of section 3, include the information specified in subsection (3)(b) of that section, a formal communication may also be given to or made to the charity if it is sent by post in a prepaid registered letter, or by the recorded delivery service, addressed—
- (a) to the charity care of OSCR, or
 - (b) where OSCR is the sender—
 - (i) to the charity at its principal office, or
 - (ii) to the charity trustee whose name is, because of section 3(4), excluded from the Register at the address which is so excluded.
- (5A) Subsection (5B) applies where OSCR has cause to believe that giving or making a formal communication to a charity by the means specified in subsection (4)(b) or (5)(b) will not cause it to be received by the charity or, as the case may be, the charity trustee whose name is set out in the charity's entry in the Register.
- (5B) The communication may also be given or made by OSCR sending it by post in a prepaid registered letter, or by the recorded delivery service, addressed to the charity at such address or addresses as OSCR considers is likely to cause it to be received by the charity or a charity trustee of the charity.
- (6) A formal communication sent under subsection (4)(c) is, unless the contrary is proved, to be deemed to be delivered on the next working day which follows the day on which it is sent.

- (7) In subsection (6), “working day” means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971 (c. 80), is a bank holiday in Scotland.

[Section 101]

102 Ancillary provision

The Scottish Ministers may by order—

- (a) modify any enactment for the purposes of preventing a body established by enactment from failing the charity test by reason of either or both of paragraphs (a) and (b) of section 7(4),
- (b) make such other incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act **or any provision made under it.**

103 Orders, regulations and rules

- (1) Any power of the Scottish Ministers under this Act to make orders, regulations or rules is exercisable by statutory instrument.
- (2) Any such power includes power to make—
 - (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
 - (b) different provision for different purposes.
- (3) An order under section 102 may modify any enactment, instrument or document **(including this Act).**
- (4) A statutory instrument containing an order, regulations or rules under this Act except—
 - ~~(a) an order under section 7(5);~~
 - ~~(b) an order under section 19(8);~~
 - ~~(c) regulations under section 64(d);~~
 - ~~(d) regulations under section 83(1) containing provisions of the type described in section 83(2)(h);~~
 - ~~(e) where subsection (5) applies, an order under section 102;~~
 - ~~(f) an order under section 107(2);~~
 - (a) an order, regulations or rules specified in subsection (5),**
 - (b) an order under section 107(2),**

is subject to annulment in pursuance of a resolution of the Scottish Parliament.

- (5) No—
 - (za) regulations under section 5(5),**
 - (a) order under section 7(5),
 - (b) order under section 19(8),
 - (ba) regulations under section 30A(6),**

~~(e) regulations made by virtue of section 64(d);~~

(c) regulations under section 64(1)—

(i) made by virtue of paragraph (d) of that section, or

(ii) containing provisions which add to, replace or omit any part of the text of an Act,

(ca) regulations under section 69(7),

(cb) regulations under section 69A(4),

(d) regulations under section 83(1) containing provisions of the type described in section 83(2)(h), or

(e) order under section 102 containing provisions which add to, replace or omit any part of the text of an Act,

may be made unless a draft of the statutory instrument containing the regulations or, as the case may be, order has been laid before, and approved by resolution of, the Parliament.

[Sections 104 and 105]

106 General interpretation

In this Act, unless the context otherwise requires—

“applicant” has the meaning given in section 4(a),

“benevolent body” has the meaning given in section 79,

“charitable purposes” means the purposes set out in section 7(2),

“charity” means a body entered in the Register,

“charity test” is to be construed in accordance with section 7,

“charity trustees” means the persons having the general control and management of the administration of a charity,

“company” means a company registered under the Companies Act 2006 in England and Wales or Scotland,

“constitution”—

(a) in relation to a charity or other body which is a company, means its articles of association,

(b) in relation to a charity or other body which is a body of trustees, means the trust deed,

(c) in relation to a SCIO, has the meaning given in section 50,

(d) in relation to a charity or other body established by enactment, means the enactment which establishes it and states its purposes,

(e) in relation to charity or other body established by a Royal charter or warrant, means the Royal charter or warrant, and

(f) in the case of any other charity or body, means the instrument which establishes it and states its purposes,

“designated national collector” means a charity designated as such under section 87(4),

“designated religious charity” means a charity designated as such under section 65(1),
“equal opportunities” and “equal opportunity requirements” have the meaning given in
Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46),

“the First-tier Tribunal” means the First-tier Tribunal for Scotland General Regulatory
Chamber

“independent report on accounts” has the meaning given in section 44(1)(ca),

“local authority” means a council constituted under section 2 of the Local Government
etc. (Scotland) Act 1994 (c. 39),

“misconduct” includes mismanagement,

“OSCR” means the holder of the Office of the Scottish Charity Regulator,

“the Register” means the Scottish Charity Register,

“relevant financial institution” means—

- (a) a person who has permission under Part 4A of the Financial Services and Markets
Act 2000 (c. 8) to accept deposits,
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act
which has permission under paragraph 15 of that Schedule (as a result of qualifying
for authorisation under paragraph 12(1) of that Schedule) to accept deposits,

and this definition must be read with section 22 of and Schedule 2 to that Act and any
relevant order under that section,

“reorganisation scheme” has the meaning given in section 42(3) and references to
“approved reorganisation schemes” are references to schemes approved under section 39
or 40,

“restricted funds reorganisation scheme” has the meaning given in section 43D and
references to “approved restricted funds reorganisation schemes” are references to
schemes approved under section 43A or 43B,

“SCIO” has the meaning given in section 49,

“working name”, in relation to a charity, means a name that is not the charity’s name but
which is used to identify the charity and under which it carries out activities.

[Section 107 and Schedules 1 – 4]