

## **EXECUTIVE NOTE**

### **THE SCOTTISH CHARITY APPEALS PANEL RULES 2006 (SSI/2006/571)**

1. The above Rules were made in exercise of the powers conferred by paragraph 4(1) of Schedule 2 to the Charities and Trustee Investment (Scotland) Act 2005 (“the Act”). The Rules are subject to negative resolution procedure.

#### **Policy Objectives**

2. The purpose of these Rules is to make provision for the procedure that must be followed when submitting an appeal to the Scottish Charity Appeals Panel (“the Panel”) under section 76 of the Charities and Trustee Investment (Scotland) Act 2005, and the rules governing the operation of the Panel. The Rules set out what a body must do to appeal a decision of Office of the Scottish Charity Regulator (“OSCR”) to the Panel, the procedure to be followed by the Panel when processing and determining the appeal, how the decision is to be published and when expenses may be awarded. The Panel is the second stage of a three stage appeals framework set out in the Act. Panel members have been appointed and a secretariat established to provide support to the Panel.

3. Chapter 10 and Schedule 2 of the Act set out the framework for a simple way to appeal certain decisions made by OSCR (or a body to which OSCR’s functions are delegated under section 38 of the Act). The decisions which may be appealed are set out in section 71 of the Act, and include decisions on entry onto the Scottish Charity Register, directions to change the name of a charity, directions not to carry out specific activities, suspension of those in management or control of a charity (including but not exclusively charity trustees), directions to stop a body being represented as a charity and directions to financial institutions not to part with property without OSCR’s consent.

4. The appeals process is in three stages. The first stage involves OSCR reviewing the decision. If OSCR confirms the decision it can then be appealed to the Panel under section 76. The Panel can confirm or quash the decision or remit it back to OSCR for reconsideration. Finally, the appellant or OSCR can appeal the decision made by the Panel to the Court of Session, who may quash or confirm the decision appealed to it.

5. This appeals process provides a simpler and cheaper means for charities and those involved in their management to appeal decisions affecting them. Previously, decisions made under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 had to be appealed to the Court of Session, which could be time consuming and expensive for charities. Accordingly, we have tried to make the Rules as user-friendly as possible, given the wide audience of people who may need to use these Rules, from qualified lawyers to trustees of very small bodies with no legal assistance. We have also provided the Panel with flexibility to deal with individual cases in the best way. The layout and terminology of the Rules reflects this and the Rules follow the order of the steps of an appeal to make the process as simple to follow as possible.

6. Under the terms of the Act, an appeal must be made within 28 calendar days of the confirmation of the decision by OSCR. The Rules start by setting out how to make an appeal, including the information that must be provided and set out various timescales that must be

followed by the appellant, OSCR and the Panel. The Rules then set out the procedure that will be followed by the Panel when processing the appeal, including entering all appeals on a register which will be publicly available.

7. The Rules then set out the provisions connected to the appeal hearing. Parties can choose whether to represent themselves or be represented by someone else and it is not necessary to have legal representation. Accordingly, the Rules allow the Panel to assist unrepresented parties to make the best of their case. Oral hearings will proceed as standard unless parties decide they do not intend to appear. If not attending, parties will have an opportunity to make further written submissions. If both parties do not intend to attend then the Panel can hear the appeal in absence of the parties. The Panel will set the date, time and place of the hearing, taking into account the convenience of the parties. Rule 16(1) allows the Panel to alter the date, time or place of the hearing at short notice with the agreement of both parties, or if one of the Panel members is unavailable due to illness or other unforeseen exceptional circumstances, such as the death of a close relative.

8. Hearings will be held in public unless the Panel decides for various reasons that it should be in private. The Rules also make provision for the hearing itself, including the right to proceed in the absence of one of the parties, the power to exclude disruptive persons and the power to adjourn a hearing. Decisions can be taken by a majority of the Panel and a copy of the document recording the decision will be sent to the parties involved. The decision must also be published and entered onto the register of appeals. The Panel may exclude certain sensitive information from publication. The Rules allow the Panel to make orders for expenses, although we do not anticipate that the Panel will award expenses in the majority of cases.

## **Consultation**

9. The proposals for the Rules were the subject of a consultation exercise from 15 December 2005 to 10 March 2006. The consultation involved a range of key stakeholders, including national and local voluntary sector intermediary organisations, representative bodies of particular groups of charities and benevolent bodies, professional bodies, local authorities, and all those organisations which have responded to previous Executive consultations on charity law reform.

10. In addition the Scottish Committee of the Council on Tribunals has been consulted in line with statutory requirements, and the majority of its comments taken on board. OSCR has also been consulted on the Rules, both during the official consultation period, and subsequently on revised drafts.

## **Financial Effects**

11. There are some costs associated with these Rules, although charities will find that they are significantly lower than the costs of making an appeal to the Court of Session, which was the only route available to appeal decisions previously. Charities will have to meet their own costs associated with an appeal and hearing, although we expect these costs to be minimal. A charity or person appealing will not have to have legal representation but may choose to do so. The system is designed to be as user-friendly as possible so that making an appeal without legal help is possible. However, if an appellant chooses to be represented or the appeal is drawn out the costs will be higher. To counterbalance this, the Panel will be able

to award costs to either party if they feel an appeal was vexatious or a delay could have been avoided or if they believe the original decision to have been unreasonable. We do not anticipate that the Panel will award expenses in the majority of cases.

12. There will also be a cost to OSCR associated with an appeal and hearing. However, these have been factored into OSCR's annual budget. A Regulatory Impact Assessment has been prepared and will be available at <http://www.scotland.gov.uk/Topics/Business-Industry/support/15242/2006#top>.

Scottish Executive Development Department

30

November

2006

**CHARITIES AND TRUSTEE INVESTMENT  
(SCOTLAND) ACT 2005**

**The Scottish Charity Appeals Panel  
Rules 2006**

**Regulatory Impact Assessment**

**Scottish Executive  
November 2006**

# CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005 THE SCOTTISH CHARITY APPEALS PANEL RULES 2006

## REGULATORY IMPACT ASSESSMENT

### Introduction

This Regulatory Impact Assessment (RIA) aims to provide information on the options considered in relation to the Scottish Charity Appeals Panel set up under the Charities and Trustee Investment (Scotland) Act 2005 (the Act) and their likely impact on the charity sector. Under Scottish Cabinet rules, any piece of legislation which will create or extend a regulatory regime must include a consideration of the impact of regulation on the relevant sector.

### Purpose and intended effect of regulation

#### *(i) The objective*

The Scottish Executive is committed to reforming the regulatory regime for charities in order to support the charities sector and to safeguard the public interest. The Charities and Trustee Investment (Scotland) Act 2005 received Royal Assent in July 2005.

This RIA provides background information on the options which were considered to develop the proposals, and the probable impact and cost of these options.

A partial RIA was issued along with the consultation paper setting out the Executive's proposals for the Scottish Charity Appeals Panel and the Rules for its procedure, in December 2005. Feedback received on the RIA during the consultation has been taken into account in the preparation of this final RIA, which has been amended and published in final form to coincide with the Rules, which are now laid before the Scottish Parliament.

**Devolution:** The Panel will only consider decisions outlined in section 71 of the Charities and Trustee Investment (Scotland) Act 2005, relating to charitable activity in Scotland.

#### *(ii) The background*

The Charities and Trustee Investment (Scotland) Act 2005 received Royal Assent on 14 July 2005. Proposals for the Bill were consulted on during the summer of 2004. The introduction of an Appeals Panel to hear appeals against the decisions made under the Act was widely welcomed during the consultation on the Bill and its passage through Parliament.

The Act provides a new regulatory regime for charitable activity in Scotland and gives the Office of the Scottish Charity Regulator (OSCR) a range of powers to intervene in the activity of a charity to protect the public and the charity brand in Scotland. OSCR's powers include the power to freeze the assets of a charity, suspend a trustee or employee or remove a charity from the register. As well as these protective measures, OSCR can make a number of administrative decisions which could affect the way a charity operates, such as refusing to allow a charity to amend its constitution or wind itself up, preventing a charity from changing its name or refusing to designate it as a designated religious charity.

Previously, decisions made by the Court of Session under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 could be appealed to the Court of Session. This can be time consuming and expensive for charities, many of which do not have the funds to appeal.

Under the 2005 Act, all the decisions outlined in section 71 of the Act, some of which are outlined above, may be subject to review by OSCR, whether or not they were made by OSCR or by a body with designated authority. Following the review, they can then be appealed to the Scottish Charity Appeals Panel. These decisions could have a significant impact on the charity and its ability to operate and it was felt appropriate to provide a simpler and cheaper means of appeal, than is currently available to charities. The Appeals Panel envisaged under the Charities and Trustee Investment (Scotland) Act 2005 is the Executive's means of providing this.

The Appeals Panel will be convened on an ad hoc basis from a pool of Panel members appointed by Scottish Ministers. The Panel will consist of 3 members, one of whom will be legally qualified and act as the Chair.

### ***(iii) Rationale for government intervention***

Without the Rules for its procedure, the Panel would not be able to function and we would not be able to bring into force the Appeals process envisaged in the Act. This would leave charities with no means of appeal against OSCR's decisions. Charities and trustees would be able to appeal to the Public Services Ombudsman or the Court of Session but only if there were administrative problems with the way OSCR made the decision; the validity of the decision itself could not be appealed.

### ***(iv) Risk assessment***

The Appeals Panel is an essential part of the implementation of the Charities and Trustee Investment (Scotland) Act 2005. Without the Rules, the Panel will not be able to function and an important counterbalance to

the increased regulation which charities will face is lost. An essential part of the introduction of the Act is that it should provide transparency and reassurance for the public, without overburdening the charities. If the Appeals Panel cannot be constituted, then we lose a part of the Act which was particularly welcomed by the sector and the careful balance maintained in the drafting of the Act is lost.

## **Consultation**

### ***(i) Within government***

The following government agencies and departments were consulted in preparation of this RIA:

Office of the Scottish Charity Regulator (OSCR).

### ***(ii) Public consultation***

A public consultation was carried out on the Scottish Charity Appeals Panel Rules from December 2005 to March 2006. Following the consultation, the responses were published and a Consultation Report has been issued.

## **Options**

### ***Option 1: Do nothing***

This option would have involved not commencing sections 75-78 of the Charities and Trustee Investment (Scotland) Act 2005. It would have left charities with no appeals mechanism, other than requesting OSCR to review a decision.

### ***Option 2: Implement Rules for the Scottish Charity Appeals Panel***

Implementation of the Rules will allow the Appeals Panel to function, giving charities a means to appeal decisions affecting them and providing an important safeguard to the regulatory regime imposed by the Act.

## **Costs and benefits**

### **Business sectors affected**

All charities operating in Scotland will be subject to the new Act and any charity, which wishes to, may appeal the decisions listed in section 71 of the Act and will, therefore, be affected. In addition, any body which applies to OSCR to be registered as a charity can appeal a decision not to

register them. Third parties do not have a right of appeal under Part 10 of the Act.

## **Benefits**

### ***Option 1: Do Nothing***

There would be no benefit from this option. Charities would have no means to appeal a decision made by OSCR because the Appeals Panel would be unable to function. If a charity was the subject of a bad decision, it could unfairly hamper the continuing operation of that charity.

### ***Option 2: Implement Scottish Charity Appeals Panel Rules***

This option would allow the appeals process in the Act to work. It would provide the necessary procedure for the Appeals Panel to function and allow charities to have bad decisions overturned, helping the charity to continue to operate as effectively as possible.

## **Costs**

### ***Option 1: Do nothing***

While there are no direct costs related to this option, it would leave charities with no appeals mechanism. Many of the decisions which could be appealed if the Panel was set up, could have significant financial implications for charities and bodies denied charitable status, by impacting on their ability to raise money, both through loss of reputation and through not being recognised as a charity. Not implementing the Rules for the Panel, and therefore preventing it from operating, would stop charities that felt a decision was wrong, from being able to publicly clear their name and restore their reputation.

### ***Option 2: Implement Scottish Charity Appeals Panel Rules***

Those appealing a decision may incur costs in doing so. A charity or person appealing will not have to have legal representation but may choose to do so. The system is designed to be as user-friendly as possible, so that making an appeal without legal help is, in fact, possible. Information about the appeals process, and the procedures that will be followed, will be provided by the Panel and in plain English, to anyone making an appeal. However, if an appellant chooses to be represented or the appeal is drawn out, the costs could be significant. To counterbalance this, the Panel will be able to award costs to either party, if they feel an appeal was vexatious or a delay could have been avoided or if they believe the original decision to have been unreasonable.

If a person appealing a decision chooses to be legally represented, they will incur costs for lodging of the necessary paperwork on time and for appearances at any hearing or preliminary hearing. It was the Executive's intention that many cases would be dealt with without the need for a hearing to keep costs to a minimum. However, in responses to the consultation on the draft Rules, there was strong support for parties to be able to insist on an oral hearing and so the presumption has been moved in favour of a hearing, unless both parties agree that one should not take place. It was felt that the balance of opinion pointed clearly towards charities being able to present their cases in person to the Panel and, subject to the agreement of both parties, the option of consideration without a hearing is still preserved.

If an appellant represents themselves, then the costs should be minimal involving only the cost of filling in the forms, collecting the necessary supporting information and posting them to the Panel. For the hearing, the costs should only involve travel to and from the chosen venue and consideration will be given to the convenience of the parties when the Panel selects a venue.

The Rules enable the Panel to award expenses in certain circumstances. Expenses may be awarded against the appellant if they acted vexatiously or that the conduct of the appellant was unreasonable, in respect of costs incurred as a result of postponement or adjournment of a hearing at the appellant's request or a late amendment to the reasons for appeal. However, we do not anticipate that the Panel will award expenses in the majority of cases.

The cost of appealing is likely to be significantly cheaper than under the current system, where appeals can only be made to the Court of Session. It also has to be weighed against the damage that could be done to a charity by a bad decision, if there were no appeals mechanism.

There will also be a cost to OSCR associated with appeals and hearings; however, these have been factored into OSCR's annual budget. Expenses may be awarded against OSCR if the decision being appealed was unreasonable, in respect of costs incurred as a result of postponement or adjournment of a hearing at OSCR's request or a late amendment to the reply to the appeal. However, we do not anticipate that the Panel will award expenses in the majority of cases.

### **Consultation with small business**

Only those directly affected by the decisions will be able to appeal them and the Rules will therefore only affect charities, bodies denied charitable status, OSCR and the Panel itself. It is not anticipated that they will have any impact on small businesses and there were no responses to the consultation on the draft partial RIA to suggest otherwise.

## **Test run of business forms**

There are no statutory business forms introduced by these Rules.

## **Competition Assessment**

The Scottish Charity Appeals Panel Rules are not expected to have any impact on competition. They will allow the Panel to function and, in doing so, ensure that charities, their staff and trustees and bodies applying to be charities are treated fairly and equitably.

## **Enforcement, sanctions and monitoring**

The Rules have been considered by the Scottish Committee of the Council on Tribunals and the decisions made by the Panel may be appealed by either party to the Court of Session.

## **Consultation**

The Charities and Trustee Investment (Scotland) Bill was developed following extensive consultation. This RIA and proposals for the Rules were produced for comment in a consultation which ran from December 2005 to March 2006. It was distributed to a range of key stakeholders, including national and local voluntary sector intermediary organisations, representative bodies of particular groups of charities and benevolent bodies, professional bodies, local authorities, and all those organisations that responded to previous Executive consultations on charity law reform. It was also available on the Scottish Executive website consultations page.

## **Implementation and delivery plan**

The Rules will be laid before the Scottish Parliament on 30 November 2006 and will come into force on 31 December 2006. They will apply to all parties wishing to appeal to the Scottish Charity Appeals Panel against decisions made by the Office of the Scottish Charity Regulator, as outlined in section 71 of the Charities and Trustee Investment (Scotland) Act 2005, relating to charitable activity in Scotland.

## **Post-implementation review**

The Scottish Charity Appeals Panel secretariat will be tasked with reviewing implementation of the legislation and rules, and advising the Executive of any need for change.

In addition the Executive will review the impact of the Rules within ten years of it coming into force.

## Summary and recommendations

Based on the analysis outlined above and the analysis of the responses to the consultation, the Executive recommends the adoption of option 2. The Rules have been drafted on this basis.

## Declaration and Publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the Responsible Minister

.....

Malcolm Chisholm

Date

.....

## Contact

Any queries about this RIA should be addressed to:

### **Fiona Warne**

Charity Law Team

Social Inclusion and Voluntary Issues Division

Scottish Executive Development Department

2-F (S), Victoria Quay

Edinburgh, EH6 6QQ

Tel: 0131 244 4023

Fax: 0131 244 5508

Email: [charityact@scotland.gsi.gov.uk](mailto:charityact@scotland.gsi.gov.uk)

Scottish Executive

DD Charity Law Team

November 2006