

**2006 No. 242 (S.2)**

**CONSTITUTIONAL LAW**

**DEVOLUTION, SCOTLAND**

**CHARITIES**

**The Charities and Trustee Investment (Scotland) Act 2005  
(Consequential Provisions and Modifications) Order 2006**

*Made* - - - - - *14th February 2006*

*Coming into force in accordance with article 1*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113 of the Scotland Act 1998<sup>(a)</sup>;

In accordance with section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006.

(2) Subject to paragraph (3), this Order shall come into force on the day after the day on which it is made.

(3) Articles 4 and 5 and the Schedule shall come into force on 1st April 2006.

(4) In this Order, “the Act” means the Charities and Trustee Investment (Scotland) Act 2005<sup>(b)</sup>.

**Status of the Office of the Scottish Charity Regulator**

**2.**—(1) For the purposes of the Scotland Act 1998, the offices in the Scottish Administration which are not ministerial offices shall be deemed to include the office known as the Office of the Scottish Charity Regulator.

(2) Notwithstanding section 51(2) of the Scotland Act 1998, service as the holder of the Office of the Scottish Charity Regulator shall not be service in the Home Civil Service.

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(a) 1998 c.46.  
(b) 2005 asp 10.

### Information sharing

3.—(1) For the purpose of enabling or assisting OSCR to exercise its functions, the Commissioners may disclose to OSCR any information concerning a recognised body which they have acquired in the performance of their functions.

(2) A person who, without the agreement of the Commissioners, discloses to another person information which has been disclosed to OSCR under paragraph (1) shall be guilty of an offence.

(3) It is a defence for a person charged with an offence under paragraph (2) of disclosing information to prove that he reasonably believed—

- (a) that the disclosure was lawful; or
- (b) that the information had already and lawfully been made available to the public.

(4) Where OSCR is charged with an offence under paragraph (2), it is not a defence that the disclosure of information was one falling within section 25(1)(a) of the Act.

(5) A person guilty of an offence under paragraph (2) shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

(6) In this article—

- (a) “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
- (b) “OSCR” means the holder of the office known as the Office of the Scottish Charity Regulator; and
- (c) “recognised body” means a body—
  - (i) which meets the charity test in section 7(1) of the Act;
  - (ii) which is recognised by the Commissioners as qualifying for relief under section 505 of the Income and Corporation Taxes Act 1988(a);
  - (iii) which has at any time applied, or been accepted as qualifying, for such relief and which is managed or controlled wholly or mainly in or from Scotland; or
  - (iv) such as is described in section 28(1)(b) of the Act.

### Action by appropriate registrar

4.—(1) On receipt of documents sent by OSCR under section 58(1)(b) (conversion into a Scottish charitable incorporated organisation) of the Act, the appropriate registrar shall—

- (a) register those documents; and
- (b) cancel the registration of the company under the Companies Act 1985(b), or of the society under the Industrial and Provident Societies Act 1965(c),

and shall notify OSCR that this has been done.

(2) In this article—

- (a) “appropriate registrar” has the meaning assigned by section 58(7) of the Act; and
- (b) “OSCR” has the meaning assigned by article 3(6)(b).

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(a) 1988 c.1. Section 505 was amended by the Finance Act 1988 (c.39), Schedule 14, Part V; the Taxation of Chargeable Gains Act 1992 (c.12), Schedule 10, paragraph 14(31); the Finance Act 1995 (c.4), section 138 and Schedule 17, paragraph 7; the Finance Act 1996 (c.8), section 146, Schedule 7 and Schedule 41; the Finance Act 2000 (c.17), Schedule 40, Part II(1); the Finance Act 2002 (c.23), Schedule 30, paragraph 3 and the Income Tax (Trading and Other Income) Act 2005 (c.5), Schedule 1, paragraph 198.

(b) 1985 c.6.

(c) 1965 c.12.

**Modifications**

5. The modifications specified in Parts 1 and 2 of the Schedule shall have effect.

Dover House,  
London  
14th February 2006

*DAVID CAIRNS*  
Parliamentary Under Secretary of State  
Scotland Office,  
Department for Constitutional Affairs,

# SCHEDULE

Article 5

## PART 1

### MODIFICATIONS OF PUBLIC GENERAL ACTS

#### *Consumer Credit Act 1974 (c.39)*

1. In the definition of “charity” in section 189(1) of the Consumer Credit Act 1974 (definitions)(a)–

- (a) for “and as respects Scotland and” substitute “as respects”; and
- (b) at the end insert “and as respects Scotland a body entered in the Scottish Charity Register”.

#### *House of Commons Disqualification Act 1975 (c.24)*

2. In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified)(b), insert at the appropriate place the following entry–

“The Scottish Charity Regulator”.

#### *Companies Act 1985 (c.6)*

3. In paragraph 5(4) of Schedule 7 to the Companies Act 1985 (charitable donations)(c), for the words from ““charitable” is to be construed” to the end substitute “a purpose is charitable if it is listed in section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005”.

#### *Companies Act 1989 (c.40)*

4. In section 112(1)(b) of the Companies Act 1989 (charitable companies (Scotland)), for the words from “established” to the end substitute “entered in the Scottish Charity Register”.

#### *Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40)*

5. Section 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (information as to recognised charities)(d) is repealed.

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(a) There are amendments to section 189(1) which are not relevant to this Order.  
(b) There are amendments to Part 2 of Schedule 1 which are not relevant to this Order.  
(c) Paragraph 5 was substituted by the Political Parties, Elections and Referendums Act 2000 (c.41), section 140.  
(d) Section 1 was amended by paragraph 7(a) of Schedule 4 to the Act.

*Charities Act 1993 (c.10)*

6.—(1) The Charities Act 1993 is amended as follows.

(2) In section 72(1)(e) (persons disqualified for being trustees of a charity)(a), after “charities” insert “or section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005 (powers of the Court of Session)”.

(3) In section 80 (supervision by Commissioners of certain Scottish charities)—

- (a) in each of subsections (3) and (4)(b)(b), for “Lord Advocate” substitute “Scottish Charity Regulator”; and
- (b) in subsection (6), for the words from “has” to the end substitute “means a body entered in the Scottish Charity Register”.

*Financial Services and Markets Act 2000 (c.8)*

7. For paragraph 7(2)(b) of Schedule 11A to the Financial Services and Markets Act 2000 (transferable securities)(c), substitute—

“(b) a body entered in the Scottish Charity Register;”.

*Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27)*

8.—(1) The Companies (Audit, Investigations and Community Enterprise) Act 2004 is amended as follows.

(2) In section 26(3)(b) (community interest companies), for the words from “given such” to the end substitute “entered in the Scottish Charity Register”.

(3) In section 40 (existing companies: Scottish charities)—

- (a) in subsection (7), for the words from “that does” to the end substitute—

“it shall continue 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 Scottish Charity Register immediately before it became a community interest company.”.

- (b) in subsection (8), the word “or” and paragraph (b) are repealed; and

- (c) subsection (9) is repealed.

(4) In section 54(8) (becoming a charity or a Scottish charity), for the words from “Commissioners of” to the end substitute “Scottish Charity Regulator that, if the special resolutions take effect and the company ceases to be a community interest company, the company will be entered in the Scottish Charity Register”.

(5) In section 63(1) (interpretation), for the definition of “Scottish charity” substitute—

““Scottish charity” means a body entered in the Scottish Charity Register.”.

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(a) There are amendments to section 72(1)(e) which are not relevant to this Order.

(b) References to “Lord Advocate” are to be read as references to “the Secretary of State” by virtue of S.I. 1999/678.

(c) Schedule 11A was inserted by S.I. 2005/1433, Schedule 2.

## PART 2

### MODIFICATIONS OF SUBORDINATE LEGISLATION

*Housing Benefit (Information from Landlords and Agents) Regulations 1997 (S.I. 1997/2436)*

**9.** In regulation 4 of the Housing Benefit (Information from Landlords and Agents) Regulations 1997 (relevant information)–

(a) in paragraph (2)(d) omit the words “or is a recognised body”; and

(b) in paragraph (6)–

(i) for the definition of “charity” substitute–

““charity” means, in England and Wales, a charity which is registered under section 3 of the Charities Act 1993 and is not an exempt charity within the meaning of that Act, and in Scotland, a body entered in the Scottish Charity Register;”; and

(ii) omit the definition of “recognised body”.

*Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (S.I. 1999/678)*

**10.** In the Schedule to the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (functions transferred to the Secretary of State)(a) omit “Charities Act 1993 (c.10), section 80;”.

*Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I. 2001/1201)*

**11.** In article 2 of the Financial Services and Markets Act 2000 (Exemption) Order 2001 (interpretation), in paragraph (a) of the definition of “charity” for the words from “recognised” to the end of that paragraph substitute “body entered in the Scottish Charity Register”.

*Community Interest Company Regulations 2005 (S.I. 2005/1788)*

**12.** In each of Schedules 1, 2 and 3 to the Community Interest Company Regulations 2005 (provisions prescribed for memorandum or articles), for paragraph 1(4)(e) substitute–

“(e) “Scottish charity” means a body entered in the Scottish Charity Register;”.

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(a) There are amendments to the Schedule which are not relevant to this Order.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes provision in consequence of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) (“the Act”). The Act creates an office to be known as the Office of the Scottish Charity Regulator and a body corporate, to be known as the Scottish Charity Regulator, which is to be the holder of that office. The Act also reforms charity law in Scotland generally.

Article 2 adds the office known as the Office of the Scottish Charity Regulator to those offices which are not ministerial offices in the Scottish Administration. Article 3 makes provision so as to permit the Commissioners for Her Majesty’s Revenue and Customs to disclose information to the Scottish Charity Regulator for the purpose of the functions of that office.

Article 4 is concerned with action to be taken by the registrar of companies or the Financial Services Authority on receipt of information from the Scottish Charity Regulator relating to the conversion of a company or a registered society (under the Industrial and Provident Societies Act 1965 (c.12)) into a Scottish charitable incorporated organisation. Article 5 and the Schedule make modifications of primary and secondary legislation in consequence of the Act.

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**£3.00**

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