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Our ref: -

15 December 2005

Dear Consultee,

Consultation on Draft Charities and Benevolent Fundraising Regulations

I am pleased to enclose a copy of the consultation paper Proposals for Charities and Benevolent Fundraising Regulations published today. The consultation paper outlines the Scottish Executive's proposals for the regulations under section 83 of the Charities and Trustee Investment (Scotland) Act 2005.

This consultation is your opportunity to have your say about these plans before the regulations are finalised and laid before the Scottish Parliament. Although we have posed specific questions on the proposals, and **to ease collation of responses it would be helpful if you respond on the summary sheet provided**, your views on any aspect of the proposals within this document are welcome. Further copies of all the enclosed documents are available from the address above, or on our website at <http://www.scotland.gov.uk/consultations>. Additional background information is available on our website at www.scotland.gov.uk/viu.

The consultation has been copied to all those individuals and organisations who responded to the consultation on the Bill. It has also been forwarded to a range of key stakeholders in charity law reform.

Please respond to this consultation in writing or by email, attaching also a completed responsee information form, to the address above by **10 March 2006**, all responses will be acknowledged. It is Scottish Executive policy on public consultations that we will publish all responses (for which we have permission to publish) on our consultation website in due course. However, if the responsee form is not returned completed with the response, we are not able to make your response public. Thank you for your valuable engagement in the on-going debate on charity law reform in Scotland.

Yours faithfully

Siân Ledger
Charity Law Team
Voluntary Issues Unit



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

**Proposals for
Charities and Benevolent Fundraising Regulations**

Consultation Paper

**Scottish Executive
December 2005**

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**CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005
CONSULTATION ON DRAFT CHARITIES AND BENEVOLENT
FUNDRAISING REGULATIONS**

INTRODUCTION

The Charities and Trustee Investment (Scotland) Act 2005 was passed by the Scottish Parliament on 9 June 2005 and received Royal assent on 14 July 2005. The Act improves and strengthens the regulation of charities operating in Scotland in a way that builds on the value that charities bring to Scottish society. It is intended that the majority of the provisions in the Act, relating to the basic regulation of charities by the Office of the Scottish Charity Regulator (OSCR) in its new independent role, will come into force around April 2006.

This consultation paper sets out the Scottish Executive's proposals for the charities and benevolent fundraising regulations that flow from the Act. Scottish Ministers have powers to make regulations on this matter under section 83 of the Act. Separate proposals for the operation of Public Benevolent Collections (to replace the current system of Public Charitable Collections) will be issued for consultation in 2006.

The Act provides an ideal opportunity to regulate fundraising to address public and sector concerns. Our proposals in this consultation paper are intended to help to maintain public confidence in the sector and increase transparency without placing undue burdens on charities and other benevolent bodies. The partial Regulatory Impact Assessment (pp. 28-38 of this document) sets out what we consider the impact of our proposals on charities and other benevolent bodies will be.

The consultation is your opportunity to have your say about these plans before the regulations are laid before Parliament. Although we have highlighted key areas for comment, your views on any aspect of the proposals within this document are welcome.

You are invited to respond before the closing date on **10 March 2006** in writing to:

Fiona Warne
Charity Act Fundraising Regulations Consultation
Voluntary Issues Unit
Scottish Executive Development Department
2-G, Victoria Quay
Edinburgh EH6 6QQ
Tel: 0131 244 4023
Fax: 0131 244 5508
Email: charityact@scotland.gsi.gov.uk

Please reply by **10 March 2006**.

This consultation, and all other Scottish Executive consultation exercises, can be viewed online at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Executive now has an email alert system for SE consultations (SEconsult at <http://www.scotland.gov.uk/Consultations/seConsult>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new SE consultations (including web links). SEconsult complements, but in no way replaces SE distribution lists, and is designed to allow stakeholders to keep up to date with all SE consultations activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form which is enclosed with this consultation paper as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Executive are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public (see the attached Respondent Information Form), these will be made available to the public in the Scottish Executive Library and on the Scottish Executive web pages by 7 April 2006. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the SE Library on 0131 244 4565. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on the content of the benevolent fundraising regulations. We aim to issue a report on this consultation process by the end of May 2006. We will also liaise with the DTI (Department of Trade and Industry) to ensure that the provisions in the draft regulations comply with the EU Unfair Commercial Practices Directive which must be implemented by June 2007.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the address above.

THE SCOTTISH EXECUTIVE CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general, Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Executive encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses (<http://www.scotland.gov.uk/consultations>). Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Executive consultation papers and related publications (eg, analysis of response reports) can be accessed at: **Scottish Executive consultations** (<http://www.scotland.gov.uk/consultations>)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005 CONSULTATION ON DRAFT CHARITIES AND BENEVOLENT FUNDRAISING REGULATIONS

BACKGROUND

The Charities and Trustee Investment (Scotland) Act 2005 (the Act) was passed by the Scottish Parliament on 9 June 2005 and received Royal assent on 14 July 2005. It is intended that the majority of the provisions in the Act, relating to the basic regulation of charities by the Office of Scottish Charity Regulator (OSCR) in its new independent role, will come into force around April 2006.

This Act gives OSCR powers to investigate, and if necessary take regulatory action against, a person or a body which represents itself to be a charity, or to be acting on behalf of a charity when it is not.

The changes in charity regulation that the Act will put in place are designed to support and encourage charitable activity in Scotland, while reassuring the public that their money is being well used and that support is being properly provided. The proposed fundraising regulations outlined here are integral to this.

As stated in the consultation paper issued with the draft Bill in June 2004, the Act is motivated by the Executive's belief that there is a clear public interest in the effective regulation of charities in Scotland. For regulation to be effective, it must promote five key principles. It must be:

independent
proportionate
accountable
transparent
consistent.

The Charities and Trustee Investment (Scotland) Act 2005 – Fundraising provisions

Part 2 of the Charities and Trustee Investment (Scotland) Act 2005 sets out an important foundation of statutory regulation of benevolent fundraising, which can be further developed by self-regulation within the charity sector. It also gives Scottish Ministers powers to make regulations on benevolent fundraising.

This section outlines the fundraising provisions contained in this Act for background only – they are finalised and are not being consulted on in this paper.

The fundraising provisions in the Act are drafted to cover fundraising by, and for, 'benevolent bodies' and charitable, benevolent and philanthropic purposes. Benevolent bodies are defined as any bodies "established for charitable, benevolent or philanthropic purposes". This is a wider concept than charity, and means that it can regulate any

fundraising for a good cause, whether or not the body raising funds is a registered charity. This means that many bodies which may have charitable purposes, but do not provide a sufficient level of public benefit or may have chosen not to be restricted by the added regulation which falls upon charities, will be regulated in order to maximise public confidence in donating. This approach was supported by the responses to the 2004 consultation on the Draft Charities and Trustee Investment (Scotland) Bill. Existing legislation regulating public charitable collections (section 119 of the Civic Government (Scotland) Act 1982) applies to all benevolent collections, and not just those for registered charities. English and Welsh legislation relates to fundraising by or for charitable institutions, which covers more than just those bodies registered as charities with the Charity Commission for England and Wales.

The Act regulates benevolent fundraising in a number of ways. OSCR will have powers to investigate individuals purporting to be a charity or to be collecting on behalf of one when they are not, and to protect any funds raised in this way. OSCR will have a general power to protect charity assets or money raised, even if they are not held by a charity.

The Act (section 82) gives benevolent bodies (and hence also charities) the right to seek an interdict preventing unauthorised fundraising by anyone who uses fundraising methods in their name which the body objects to, who is not a fit and proper person to fundraise or if the body does not wish to be associated with that venture.

Section 81 of the Act requires professional fundraisers and commercial participators (a normal business which undertakes a promotion from which a good cause will benefit) who solicit money or other goods on behalf of a named charity or benevolent body to have an agreement with that body to do so. Charities, benevolent bodies and OSCR (on behalf of charities only) will have the right to seek an interdict to stop professional fundraisers and commercial participators who are fundraising in a body's name without an agreement or out with an agreement in the required form.

The Act also sets out a system for licensing public benevolent collections. Separate proposals for the detailed operation of the public benevolent collection process will be issued for consultation in 2006.

Self Regulation by the fundraising sector

The fundraising sector has been working to develop a self regulation scheme which it aims to launch in 2006. In response to a recommendation in the Prime Minister's Strategy Unit report recommending the establishment of a self-regulation scheme, with powers for the government to introduce statutory regulation of fundraising if necessary, the Institute of Fundraising set up the Buse Commission to devise a structure for the self-regulation of fundraising organisations and activities. The Institute of Fundraising has produced a business plan, and is currently undertaking the necessary steps so that it can be implemented. The Executive has decided to allow a self-regulation scheme time to prove its worth, by setting out the fundamentals for transparent charity fundraising in the Act and these regulations, which can be complemented by good practice standards drawn

up and overseen by a self-regulatory body. However, the Act includes powers in section 83 to regulate fundraising further if it is felt that self-regulation has not been effective. The exact model of self-regulation is obviously an issue for the sector to consider and implement, however the Executive, along with the Home Office, have agreed to provide funding to help the scheme establish itself.

Current Requirements

There is currently very little legislation regulating benevolent fundraising in Scotland. The only existing legislation is contained in section 119 of the Civic Government (Scotland) Act 1982 and The Public Charitable Collections (Scotland) Regulations 1984 and The Public Charitable Collections (Scotland) Amendment Regulations 1988 relating to the system of local authority licensing of public charitable collections. This legislation will be replaced in due course by the public benevolent collections provisions contained within the Charities and Trustee Investment (Scotland) Act 2005. The details of this system will be set out in a separate set of regulations, and we will be issuing a separate consultation paper on this in 2006.

There is, however, much information about fundraising good practice available to bodies fundraising in Scotland, for example from SCVO, the Charity Commission and the Institute of Fundraising.

Charitable fundraising in England and Wales is regulated through provisions in the 1992 Charities Act as well as in the 1994 Charitable Institutions (Fund-Raising) Regulations. These regulate fundraising by professional fundraisers and commercial participators, an area which is currently unregulated in Scotland.

The Home Office is also currently taking forward reforms to charity legislation in England and Wales. The Charities Bill revises the section in the 1992 Act on the statements to be made by professional fundraisers and commercial participators, and the public charitable collections system. For more details of Home Office plans and a copy of their Bill visit their website at www.homeoffice.gov.uk/comrace/active/charitylaw/index.html.

Reasons for change

Benevolent fundraising is an evolving area and there was widespread support from fundraisers, charities, the public and other interested stakeholders to proposals in the Scottish Executive consultation on the draft Bill in 2004 to regulate fundraising. There is evidence that a small number of scandals reported in the media affected public confidence in giving to charities. The draft regulations aim to ensure transparency and accountability, and therefore help public confidence and support benevolent fundraising.

SUMMARY OF PROPOSALS IN DRAFT CHARITIES AND BENEVOLENT FUNDRAISING REGULATIONS AND QUESTIONS

General

This consultation paper sets out our proposals for the charities and benevolent fundraising regulations that flow from the Act.

To ensure the public is properly protected, section 83 of the Charities and Trustee Investment (Scotland) Act 2005 provides Scottish Ministers with powers to regulate benevolent fundraising through secondary legislation on a number of fundraising matters, such as the information to be provided by fundraisers to potential donors. The Act requires Ministers to consult before making any regulations under section 83.

This section of the consultation paper sets out our proposals for the fundraising regulations and our reasons behind them. The paper also contains a number of specific questions. However we would welcome comments on all aspects of our proposals. The draft regulations are contained within this consultation paper (pages 20-27).

Our proposals are intended to help maintain public confidence in the sector and increase transparency without placing undue burdens on charities and other benevolent bodies.

The majority of the provisions in the draft regulations apply only to fundraising by professional fundraisers and commercial participators. Professional fundraisers are defined in section 79 of the 2005 Act as “a person (other than a benevolent body or company connected with it) who carries on a fundraising business, and any other person who for reward solicits money or other property for the benefit of a benevolent body or for charitable, benevolent or philanthropic purposes...”. Commercial participators are defined as a person who “carries on for profit a business other than a fundraising business, but in the course of that business, engages in a promotional venture in the course of which it is represented that benevolent contributions are to be (i) given to or applied for the benefit of one or more particular benevolent bodies, or (ii) applied for charitable, benevolent or philanthropic purposes”. The draft regulations set out the information which must be included in agreements between professional fundraisers/commercial participators and benevolent bodies they are fundraising for, how the funds raised are to be transmitted to the benevolent body and the right of benevolent bodies to see documents relating to an agreement with a professional fundraiser/commercial participator.

The draft regulations also set out a requirement for **all** benevolent fundraisers to make a statement to potential donors setting out whether they are being paid to collect. This requirement applies not only to professional fundraisers and commercial participators, but also to in-house staff of the benevolent body and volunteer fundraisers. We intend to implement these regulations in summer 2006.

Many of the proposals contained in this consultation paper and the attached draft regulations are similar to the existing English and Welsh requirements. The importance of this was highlighted in the responses in the consultation on the draft Charities and Trustee Investment (Scotland) Bill in 2004 since many benevolent bodies fundraise in both jurisdictions, and they felt a similar approach was important to facilitate this. In addition, it makes fundraising by media such as television and radio, which can be broadcast across the whole of the UK, simpler.

We will also liaise with the DTI (Department of Trade and Industry) to ensure that the provisions in the draft regulations comply with the EU Unfair Commercial Practices Directive which must be implemented by 2007.

Question 1

Do you agree the approach adopted in the draft regulations that they should apply to all benevolent fundraising, and not just fundraising for registered charities?

Contracts between Professional Fundraisers/Commercial Participators and Benevolent Bodies (regulations 2-3 of draft Charities and Benevolent Fundraising Regulations)

Section 81 of the Charities and Trustee Investment (Scotland) Act requires professional fundraisers and commercial participators collecting on behalf of a named benevolent body to have a formal agreement with the body before doing so. Section 83 of the Act allows regulations to set out more detail about this agreement. The proposals in regulations 2 & 3 of the draft regulations set out the detail for the form of contract between a benevolent body and professional fundraiser/commercial participator. In addition, charities registered with OSCR will need to ensure that any contract meets the requirements set out in any regulations which may be made under section 15 of the 2005 Act about references to charitable status in documents.

The draft charities and benevolent fundraising regulations set out only fairly basic requirements, such as the names and addresses of all the parties, the length of the agreement, the objectives and the remuneration that the professional fundraiser or commercial participator will be entitled to. These requirements are along the lines of the existing English and Welsh legislation (regulations 2 and 3 of The Charitable Institutions (Fund-Raising) Regulations 1994). We have decided not to include too much detail in the regulations following representations from the Institute of Fundraising and others that the regulations need to be general enough to ensure that they encompass the wide range of contracts currently used.

The Institute of Fundraising have guidance on contracts, including a Code of Practice (Code of Fundraising Practice– Best Practice for Fundraising Contracts and Relationships between VCOs, PFOs, Consultants and Agencies), as well as model contracts for fundraisers and benevolent bodies to use. Under the self regulation scheme which the fundraising sector is currently developing, all members will be required to follow this

code of conduct. Ministers have powers to legislate further on the content of the contract if necessary.

As section 81(6) of the Act sets out, a professional fundraiser or commercial participator shall not be entitled to remuneration other than is provided in an agreement in the prescribed form or is provided for by order of a court. Any agreement which does not meet these requirements is only enforceable against the body through the courts.

Question 2

Do you agree that the legislation should not include too much detail on the form of contract in the regulations, or do you think that the regulations should set out more detailed requirements?

Statement on Remuneration (regulation 4 of the draft Charities and Benevolent Fundraising Regulations)

The Act provides Ministers with powers under section 83(2)(c) and (d) to make regulations setting out the information to be provided to potential donors/purchasers of goods or services by professional fundraisers, commercial participators and benevolent fundraisers. Initially it was intended that this would take the form of a statement, by professional fundraisers and commercial participators, to inform potential donors of the extent to which the charity or charitable purpose will benefit from the transaction – similar to the provisions set out in section 60 of the 1992 Charities Act.

Following suggestions received during the consultation on the draft Bill last year, we decided to amend the format of the statement simply to require fundraisers to indicate to potential donors if they are a volunteer, a paid member of the body's staff, a professional fundraiser contracted by the body to collect on their behalf, or a commercial participator. Those falling into the last 2 categories (i.e. professional fundraisers and commercial participators) would also be required to state that they had further information regarding their remuneration or the amount of the donation that will go to the benevolent body that they could provide if asked.

It has been suggested to the Scottish Executive that the main distinction the public makes, and the information the public wants to know, is whether or not the fundraiser is being paid to collect; not how much (it is still a widely-held misconception amongst the public that all charity/benevolent collectors are volunteers). We hope that this will reduce the possibility of confusion amongst potential donors (only those who are interested will receive the further information regarding levels and methods of remuneration) and prevent professional fundraisers and commercial participators making unclear or very general statements. The requirement in the 1992 Charities Act are so general that professional fundraisers and commercial participators contributing widely varying proportions of the donation or purchase price to the charity are able to make the same statement.

The regulations also set out the additional information that is to be provided by professional fundraisers and commercial participators –namely the level of remuneration, how remuneration is being calculated and the notifiable amount. This should be available in a written format. In relation to commercial participators, this information should be clearly displayed, either on the item (such as Christmas cards), or, for example, on the box the items are displayed in.

The regulations also require all professional fundraisers and commercial participators to make clear the benevolent body/bodies to benefit from the donation, or if the donation is to benefit a benevolent purpose what method will be used to distribute this to benevolent bodies.

The regulations also require statements relating to an appeal made on the radio or television where donors can pay by credit or debit card to include details of their right to a refund within 7 days of a payment over £50 being made. Statements made over the telephone must also include details of the right to a refund. This is set out in more detail in the following section of this consultation paper.

Fundraisers who do not make the required statement will be guilty of an offence, and will be liable to a fine not exceeding level 5 on the standard scale. The regulations explain that it is a defence for the person committing the offence to prove reasonable excuse for non-compliance.

Question 3

Do you agree with our decision to require all benevolent fundraisers to make a general statement about whether or not they are being paid?

Question 4

Do you agree that commercial participators and professional fundraisers should be required to indicate that they have more information, in written format, which the donors may choose to see if they wish to know more about the commercial participator/professional fundraiser's remuneration?

Definition of Professional Fundraiser

Section 83 of the Act allows Scottish Ministers to set out in regulations the amount that a paid fundraiser must receive to be classed as a professional fundraiser for the purposes of the requirements relating to professional fundraisers. We do not intend to use this power in these charities & benevolent fundraising regulations since we are concerned that setting an amount in the regulations may exclude a number of people employed by professional fundraising organisations, such as students who may only do 1 or 2 days work, from the professional fundraiser definition. We do not want this to happen since this would mean that those excluded from the definition, but employed by a professional fundraising business, would not be required to make available the additional information

about their remuneration in the statement to potential donors. We would welcome your views on this.

Question 5

Do you agree that the regulations should not limit the definition of professional fundraiser by setting out the amount that a paid fundraiser must receive to be classed as a professional fundraiser?

Refund of Monies Paid (regulation 5 of the draft Charities and Benevolent Fundraising Regulations)

The regulations also contain special requirements about written statements and refunds in relation to telephone fundraising and broadcast appeals. Section 83(2)(e) of the 2005 Act allows Scottish Ministers to make regulations regarding the cancellation of monies or agreements to pay monies.

Donors who give £50 or more (by debit or credit card) in response to a TV or radio appeal by a professional fundraiser or commercial participator are entitled to a refund if they request it within 7 days of the appeal.

Donors who give, or agree to give, £50 or more (by any method of payment) in response to solicitation by telephone, by a professional fundraiser or commercial participator, are entitled to a refund if they request it within 7 days of receiving the receiving a written statement from the telephone fundraiser (as is required).

The refund may be minus expenses, and conditional upon the return of goods received. There is no entitlement to a refund if payment was made for services which had been received before the request for a refund was made.

Question 6

Do you agree with our decision to include provisions relating to the refund of monies to donors? If you agree, are you happy with the provisions outlined in this consultation paper?

Availability of Books, Documents or Other Records (regulation 6 of the draft Charities and Benevolent Fundraising Regulations)

Section 83(2)(f) of the 2005 Act allows the regulations to include provisions requiring professional fundraisers or commercial participators to make available to benevolent bodies, with whom they have agreements, records which relate to the benevolent bodies. Regulation 6 of the attached draft regulations requires professional fundraisers and commercial participators to allow benevolent bodies access to all books, documents, computer or other records relating to them which are kept for the purposes of the agreement. These provisions are similar to those contained in regulation 5 of The

Charitable Institutions (Fund-Raising) Regulations 1994, which covers this in England and Wales.

Transmission of Property to Benevolent Bodies (regulation 7 of the draft Charities and Benevolent Fundraising Regulations)

The regulations also set out details concerning the transfer of funds raised, for a benevolent body by professional fundraisers or commercial participators, to the relevant benevolent body. Professional fundraisers and commercial participators are only entitled to remuneration as set out in the contract (section 81 of the 2005 Act). The draft regulations set out that funds must be transferred by the professional fundraiser/commercial participator to the benevolent body within 28 days, or a different period agreed between them.

These requirements are made using the power in section 83(2)(g) of the 2005 Act, and are similar to the provisions made by the 1994 Charitable Institutions (Fund-Raising) Regulations which cover England and Wales.

Question 7

Do you agree with our decision to include provisions relating to the availability of documents and the transmission of property from professional fundraisers/commercial participators to benevolent bodies?

Transitional provisions

The Executive proposes that temporary arrangements should be provided to allow a period of grace (perhaps 6 months), from the date that these regulations come into force, to allow benevolent bodies who have entered into contracts with professional fundraisers or commercial participators before this date, and which do not meet the requirements in these regulations, to agree new contracts that meet the requirements. During this period these professional fundraisers and commercial participators would not be committing an unlawful act under section 81(1) of the Act. Section 81(5) of the Act, which makes an agreement which does not meet the requirements unenforceable against the benevolent body except by an order by the sheriff, would not apply to these contracts during this period. These transitional provisions will be contained in a separate transitional order which will be made under the 2005 Act.

Question 8

Do you agree that 6 months from the date the proposed regulations come into force is an appropriate period of grace for professional fundraisers and commercial participators to agree new contracts with benevolent bodies that meet the requirements in the regulations?

Offences (regulation 8 of the draft Charities and Benevolent Fundraising Regulations)

The draft regulations set out that failure to comply with any of these regulations is liable to a fine not exceeding level 5. The draft regulations do not set different offence levels for different offences under the regulations since the Executive feels that all the offences are equal in severity. We would welcome your views on this point.

However, it is worth stressing that the Act and its implementation will be proportionate, and that these draft regulations set out that someone who commits an offence can use the defence of reasonable excuse.

Question 9

Do you agree that all offences in these draft regulations are equal in severity? If not, which ones are more severe, and which are less severe?

The Partial Regulatory Impact Assessment (RIA) (pages 28-38 of consultation paper)

The partial regulatory impact assessment examines the impact of the new fundraising requirements on charities and other benevolent bodies, on fundraising businesses and on OSCR. It aims to assess the impact on benevolent bodies and fundraisers collecting on their behalf, as well as the overall cost of meeting these requirements. This is compared with the benefits to the public of having greater information about what will happen to their donations, and to benevolent bodies of improved public confidence in the sector. We anticipate that charities and benevolent bodies that are meeting the existing good practice requirements will face little or no additional burden. A finalised version of the RIA will be prepared to accompany the final regulations. Any additional information that consultees are able to provide for the RIA would be welcomed.

Question 10

Does the RIA provide an accurate picture of the impact of the proposed regulations and the other options? Do you have any comments on the RIA? Are you able to provide further information which might help expand or improve the RIA?

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

**CONSULTATION ON DRAFT CHARITIES AND BENEVOLENT
FUNDRAISING REGULATIONS**

SUMMARY OF QUESTIONS ASKED IN CONSULTATION PAPER

Question 1: Do you agree the approach adopted in the draft regulations that they should apply to all benevolent fundraising, and not just fundraising for registered charities?

Question 2: Do you agree that the legislation should not include too much detail on the form of contract in the regulations, or do you think that the regulations should set out more detailed requirements?

Question 3

Do you agree with our decision to require all benevolent fundraisers to make a general statement about whether or not they are being paid?

Question 4

Do you agree that commercial participators and professional fundraisers should be required to indicate that they have more information, in written format, which the donors may choose to see if they wish to know more about the commercial participator/professional fundraiser's remuneration?

Question 5: Do you agree that the regulations should not limit the definition of professional fundraiser by setting out the amount that a paid fundraiser must receive to be classed as a professional fundraiser?

Question 6: Do you agree with our decision to include provisions relating to the refund of monies to donors? If you agree, are you happy with the provisions outlined in this consultation paper?

Question 7: Do you agree with our decision to include provisions relating to the availability of documents and the transmission of property from professional fundraisers/commercial participators to benevolent bodies?

Question 8: Do you agree that 6 months from the date the proposed regulations come into force is an appropriate period of grace for professional fundraisers and commercial participators to agree new contracts with benevolent bodies that meet the requirements in the regulations?

Question 9: Do you agree that all offences in these draft regulations are equal in severity?
If not, which ones are more severe, and which are less severe?

Question 10: Does the RIA provide an accurate picture of the impact of the proposed regulations and the other options? Do you have any comments on the RIA? Are you able to provide further information which might help expand or improve the RIA?

Name:.....

Position.....

Organisation.....

Address.....

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.....

Date.....

SCOTTISH STATUTORY INSTRUMENT

2006 No. X

CHARITIES

The Charities and Benevolent Fundraising (Scotland) Regulations 2006

Made.....2006

Laid before the Scottish Parliament.....2006

Coming into force.....2006

The Scottish Ministers, in exercise of the powers conferred by section 83 of the Charities and Trustee Investment (Scotland) Act 2005(a) and of all other powers enabling them in that behalf, and after consultation with such persons as they think fit in accordance with section 83(1) of that Act, hereby make the following Regulations:

Citation, commencement and interpretation

1. – (1) These Regulations may be cited as the Charities and Benevolent Fundraising (Scotland) Regulations 2006 and shall come into force on [2006].

(2) In these Regulations, “the 2005 Act” means the Charities and Trustee Investment (Scotland) Act 2005;

(3) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(b)

Agreement between professional fundraisers and benevolent bodies

2. – (1) The requirements as to form and content of an agreement made for the purposes of section 81(1)(a) of the 2005 Act are those set out in the following provisions of this regulation.

(2) Such an agreement (hereafter in this regulation referred to as “the agreement”) shall be *in writing* and shall be signed by or on behalf of the benevolent body and the professional fundraiser.

(3) The agreement shall specify-

(a) the name and address of each of the parties to the agreement;

(b) the date on which the agreement was signed by or on behalf of each of those parties;

- (c) the period for which the agreement is to subsist;
 - (d) any terms relating to the termination of the agreement prior to the date on which that period expires; and
 - (e) any terms relating to the variation of the agreement during that period.
- (4) The agreement shall also contain-
- (a) a statement of its principal objectives and the methods to be used in pursuit of those objectives;
 - (b) if there is more than one benevolent body party to the agreement, provision as to the manner in which and the proportion in which the benevolent bodies which are party to the agreement, are to benefit respectively under the agreement is to be determined; and
 - (c) provision as to the amount by way of remuneration or expenses which the professional fundraiser is to be entitled to receive in respect of things done by him in pursuance of the agreement and the manner in which that amount is to be determined.
- (5) If the benevolent body is a registered charity in terms of the 2005 Act, the agreement must also contain the details required in terms of any regulations made under section 15 of the 2005 Act.

Agreements between commercial participators and benevolent bodies

- 3. –** (1) The requirements as to form and content of an agreement made for the purposes of section 81(1)(b) of the 2005 Act are those set out in the following provision of this regulation.
- (2) Such an agreement (hereafter in this regulation referred to as “the agreement”) shall be *in writing* and shall be signed by or on behalf of the benevolent body and the commercial participator.
- (3) The agreement shall specify-
- (a) the names and address of each of the parties to the agreement;
 - (b) the date on which the agreement was signed by or on behalf of each of those parties;
 - (c) the period for which the agreement is to subsist;
 - (d) any terms relating to the termination of the agreement prior to the date on which that period expires; and
 - (e) any terms relating to the variation of the agreement during that period.
- (4) The agreement shall also contain-
- (a) a statement of its principal objectives and the methods to be used in pursuit of those objectives;
 - (b) provision as to the manner in which are to be determined-
 - (i) if there is more than one benevolent body party to the agreement, the proportion in which the benevolent bodies which are party to the agreement, are respectively to benefit under the agreement; and

(ii) the proportion of the consideration given for goods or services sold or supplied by the commercial participator, or of any other proceeds of a promotional venture undertaken by him, which is to be given to or applied for the benefit of the benevolent body, and

(iii) the sums by way of donations by the commercial participator in connection with the sale or supply of any goods or services sold or supplied by him which are to be so given or applied,

as the case may require; and

(c) provision as to any amount by way of remuneration or expenses which the commercial participator is to be entitled to receive in respect of things done by him in pursuance of the agreement and the manner in which any such amount is to be determined.

(5) The statement of methods referred to in paragraph (4)(a) above shall include, in relation to each method specified, a description of the type of charitable contributions which are to be given or applied for the benefit of the benevolent body and of the circumstances in which they are to be so given or applied.

(6) If the benevolent body is a registered charity in terms of the 2005 Act, the agreement must also contain the details required in terms of any regulations made under section 15 of the 2005 Act.

Requirement to indicate benevolent bodies benefiting, remuneration etc.

4. - (1) Where a professional fundraiser, commercial participator or any other benevolent fundraiser solicits money, promises of money or other benevolent contributions for the benefit of one or more particular benevolent bodies of the 2005 Act, the solicitation must be accompanied by a statement *in writing* clearly indicating—

- (a) the name or names of the body or bodies concerned;
- (b) if there is more than one body, the proportions in which they are to benefit; and
- (c) if the fundraiser is to receive remuneration in connection with the appeal,

unless the representation is made by the fundraiser in person in which case the fundraiser must provide this information orally/verbally.

(2) Where a professional fundraiser, commercial participator or any other benevolent fundraiser solicits money, promises of money or other benevolent contributions for charitable, benevolent or philanthropic purposes of any description, rather than for the benefit of one or more particular benevolent bodies of the 2005 Act, the solicitation must be accompanied by a statement *in writing* clearly indicating—

- (a) the fact that the fundraiser is soliciting money, promises of money or other benevolent contributions for those purposes and not for the benefit of any particular benevolent body or bodies;
- (b) the method by which it is to be determined how the proceeds of the appeal are to be distributed between different benevolent bodies; and
- (c) if the fundraiser is to receive remuneration in connection with the appeal.

unless the representation is made by the fundraiser in person in which case the fundraiser must provide this information orally/verbally.

(3) Where a professional fundraiser solicits money, promises of money or other benevolent contributions-

(a) for the benefit of one or more particular benevolent bodies, or

(b) for charitable, benevolent or philanthropic purposes of any description,

the solicitation must also be accompanied by a further statement indicating that additional information is available should the person making the payment wish to see it, *in writing*, in addition to the statement referred to in paragraph (1) and (2), clearly indicating the method by which the professional fundraiser's remuneration in connection with the appeal is to be determined and the notifiable amount of the remuneration.

(4) Where any representation is made by a commercial participator to the effect that charitable contributions are to be given to or applied-

(a) for the benefit of one or more particular benevolent bodies, or

(b) for charitable, benevolent or philanthropic purposes of any description,

the representation must also be accompanied by a further statement *in writing*, in addition to the statement referred to in paragraph (1) and (2), clearly indicating the method by which the professional fundraiser's remuneration in connection with the appeal is to be determined and the notifiable amount of whichever of the following sums is applicable in the circumstances—

(i) the sum representing so much of the consideration given for the goods or services sold or supplied by the commercial participator as is to be given to or applied.,

(ii) the sum representing so much of any other proceeds of a promotional venture undertaken by the commercial participator as is to be so given to or applied.

(iii) the sum of the donations by the commercial participator in connection with the sale or supply of such goods or services which are to be so given or applied..

(iv) where the representation is made *orally/verbally*, the commercial participator must inform the person making the payment that this information is available in writing should they wish to see it.

(5) In paragraphs (2) to (4) the “notifiable amount” of any remuneration or other sum is—

(a) the actual amount of the remuneration or sum, if known when the statement is made; or

(b) in any other case, the estimated amount of the remuneration or sum, calculated as accurately as is reasonably possible in the circumstances.

(6) If a solicitation or representation mentioned in any of paragraphs (1) to (4) is made by a professional fundraiser or commercial participator—

(a) in the course of a radio or television programme; and

(b) in association with an announcement to the effect that payment may be made, in response to the solicitation or representation, by credit card or debit card,

the statement required by the paragraph in question must include full details of the right to have refunded any payment of £50 or more which is so made under regulation 4(1) to (4).

(7) If a solicitation or representation mentioned in any of paragraphs (1) to (4) is made orally but is not made—

- (a) by speaking directly to the particular person or persons to whom it is addressed and in the presence of the person or persons; or
- (b) in the course of a radio or television programme,

the professional fundraiser or commercial participator concerned must, within 7 days of any payment of £50 or more being made to the fundraiser or commercial participator in response to the solicitation or representation, give to the person making the payment a written statement containing the matters set out in paragraph (8).

(8) Those matters are—

- (a) the matters specified in sub-paragraphs (a) to (b) or (a) to (c) of the relevant paragraph [in question]; and
- (b) full details of the person's right—
 - (i) under regulation 4(2) to cancel an agreement, and
 - (ii) under regulation 4(2) or (3) to have refunded any payment of £50 or more, made in response to the solicitation or representation.

(9) In paragraph (7) and (8) references to the making of a payment are to the making of a payment of whatever nature and by whatever means, including by credit card or debit card, and for the purposes of those paragraphs a payment made—

- (a) in person is to be regarded as made at the time when it is made;
- (b) by post is to be regarded as made at the time when it is posted; and
- (c) by giving, by telephone or by means of any other electronic communications apparatus, authority for an account to be debited with the payment, is to be regarded as made at the time when the authority is given.

(10) In this regulation “the appeal”, in relation to any solicitations by a professional fundraiser, means the campaign or other fundraising venture in the course of which the solicitation is made.

Cancellation of payments and agreements made in response to appeals

5. - (1) Where—

- (a) a person (“the donor”), in response to a solicitation or representation mentioned in any of paragraphs (1) to (4) of regulation 4, which is made in the course of a radio or television programme, makes any payment of £50 or more to the relevant fundraiser by credit card or debit card; and
- (b) before the end of the period of 7 days beginning with the date of the solicitation or representation, the donor serves on the relevant fundraiser a notice [in writing] indicating the donor's intention to cancel the payment,

the relevant fundraiser must, [as soon as reasonably possible,] refund the payment.

(2) Where—

(a) a person (“the donor”), in response to any solicitation or representation falling within regulation 4(7), enters into an agreement with the relevant fundraiser under which the donor is, or may be, liable to make any payment or payments to the relevant fundraiser, and the amount or aggregate amount which the donor is, or may be, liable to pay under the agreement is £50 or more; and

(b) before the end of the period of 7 days beginning with the date when the donor is given the written statement referred to in that subsection, the donor serves on the relevant fundraiser a notice [in writing] indicating the donor’s intention to cancel the agreement, the notice operates, as from the time when it is so served, to cancel the agreement and any liability of any person other than the donor in connection with the making of any such payment or payments, and the relevant fundraiser must[, as soon as reasonably possible,] refund any payment of £50 or more made by the donor under the agreement.

(3) Where—

(a) a person (“the donor”), in response to any solicitation or representation falling within regulation 4(7),—

(i) makes any payment of £50 or more to the relevant fundraiser, but

(ii) does not enter into any such agreement as is mentioned in paragraph (2) of this section, and

(b) before the end of the period of 7 days beginning with the date when the donor is given the written statement referred to in regulation 4(7) of that section, the donor serves on the relevant fundraiser a notice [in writing] indicating the donor’s intention to cancel the payment,

the relevant fundraiser must[, as soon as reasonably possible,] refund the payment.

(4) The right of any person to have a payment refunded under any of paragraphs (1) to (3)—

(a) is a right to have refunded the amount of the payment less any administrative expenses reasonably incurred by the relevant fundraiser in connection with—

(i) the making of the refund, or

(ii) (in the case of a refund under paragraph (2)) dealing with the notice of cancellation served by that person; and

(b) is, in the case of a payment for goods already received, conditional upon restitution being made by the person of the goods in question.

(5) Nothing in paragraphs (1) to (3) has effect in relation to any payment made or to be made in respect of services which have been supplied at the time when the relevant notice is served.

(6) In this regulation references to the making of a payment are to the making of a payment of whatever nature and (in the case of paragraph (2) or (3)) by whatever means, including by credit card or debit card.

(7) Regulation 4(9) has effect for determining when a payment is made for the purposes of this regulation as it has effect for determining when a payment is made for the purposes of regulation 4(7) and 4(8).

(8) In this section “the relevant fundraiser”, in relation to any solicitation or representation, means the professional fundraiser or commercial participator by whom it is made.

Availability of books, documents or other records

6. – (1) A professional fundraiser or commercial participator who is a party to an agreement made for the purposes of section 81(1) of the 2005 Act shall, on request and at all reasonable times, make available to any benevolent body which is party to that agreement any books, documents or other records (however kept) which relate to that institution and are kept for the purposes of the agreement.

(2) In the case of any record which is kept otherwise than in legible form, the reference in paragraph (1) above to making that record available shall be construed as a reference to making it available in legible form.

Transmission of money or promises of money to benevolent bodies

7. – (1) Any money, promises of money or other benevolent contributions acquired by a professional fundraiser or commercial participator for the benefit of, or otherwise falling to be given to or applied by such a person for the benefit of, a benevolent body shall, notwithstanding any inconsistent term in an agreement made for the purposes of section 81(1) of the 2005 Act, be transmitted to that institution in accordance with the following provisions of this regulation.

(2) A professional fundraiser or commercial participator holding any such money [promises of money] or other benevolent contributions as is referred to in paragraph (1) above shall, unless he has a reasonable excuse-

(a) in the case of any money, and any negotiable instrument which is payable to or to the account of the benevolent body, as soon as is reasonably practicable after its receipt and in any event not later than the expiration of 28 days after that receipt or such other period as may be agreed with the benevolent body-

(i) pay it to the person or persons having the general control and management of the administration of the benevolent body; or

(ii) pay it into an account held by a bank or building society in the name of or on behalf of the benevolent body which is under the control of the person, or any of the persons, specified in sub-paragraph (i) above.

Offences and penalties

8. - (1) Any person required to comply with any regulation, who fails to comply with that regulation, is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Where the commission by any person of an offence is due to the act or default of some other person, that other person is guilty of the offence and may be charged with and convicted of the offence whether or not proceedings are taken against another person.

(3) It is a defence for a person charged with an offence under these regulations to prove that the person had reasonable excuse for not complying with the requirement.

A member of the Scottish Executive

St Andrew's House,
Edinburgh

[] 2006

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

Charities and Benevolent Fundraising Regulations

Draft Partial Regulatory Impact Assessment

**Scottish Executive
December 2005**

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005 CONSULTATION ON DRAFT CHARITIES AND BENEVOLENT FUNDRAISING REGULATIONS

PARTIAL REGULATORY IMPACT ASSESSMENT

Introduction

This draft Regulatory Impact Assessment aims to provide information on the options considered in relation to the draft regulations for charities and benevolent fundraising in Scotland, under section 83 of the Charities and Trustee Investment (Scotland) Act 2005 (the Act) and their likely impact on the 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. We would welcome your comments on the assumptions made here, in order to revise this RIA and improve its accuracy.

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 in relation to charities. The Charities and Trustee (Scotland) Act received Royal Assent on 14 July 2005. This draft Regulatory Impact Assessment (RIA) forms part of the consultation paper setting out the Executive's proposals for the charities and benevolent fundraising regulations under section 83 of the Act. These regulations will set out the conditions which must be followed by benevolent fundraisers.

This RIA provides background information on the options which were considered to develop the proposals, and the probable impact and cost of these options. We would welcome views on the issues considered in this RIA, which will be amended and published in final form when the regulations are laid before the Scottish Parliament.

Devolution: The regulations will only apply to benevolent fundraising 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.

Part 2 of the Charities and Trustee Investment (Scotland) Act 2005 sets out an important foundation of statutory regulation of benevolent fundraising, which can be further developed by self-regulation within the charity sector. It also gives Scottish Ministers powers to make regulations on benevolent fundraising.

The fundraising provisions in the Act are drafted to cover fundraising by, and for, 'benevolent bodies' and charitable, benevolent and philanthropic purposes. Benevolent bodies are defined as any bodies established for charitable, benevolent or philanthropic purposes, whether they are actually charities or not. The Act regulates benevolent fundraising in a number of ways. OSCR will have powers to investigate individuals purporting to be a charity or to be collecting on behalf of one when they are not, and to protect any funds raised in this way. The Act requires professional fundraisers and commercial participators (a normal business which undertakes a promotion from which a good cause will benefit) who solicit money or other goods on behalf of a named benevolent body to have an agreement with that body to do so. The Act also gives benevolent bodies (and hence also charities) the right to seek an interdict preventing unauthorised fundraising in their name. Section 83 of the Act allows Scottish Ministers to regulate benevolent fundraising further through regulations.

The proposals in the draft charities and benevolent fundraising regulations are made using these powers in section 83 of the Act and are intended to help maintain public confidence in the sector and increase transparency without placing undue burdens on charities and other benevolent bodies.

The majority of the provisions in the draft regulations apply only to fundraising by professional fundraisers and commercial participators. Professional fundraisers are defined in section 79 of the 2005 Act as "a person (other than a benevolent body or company connected with it) who carries on a fundraising business, and any other person who for reward solicits money or other property for the benefit of a benevolent body or for charitable, benevolent or philanthropic purposes...". Commercial participators are defined as a person who "carries on for profit a business other than a fundraising business, but in the course of that business, engages in a promotional venture in the course of which it is represented that benevolent contributions are to be (i) given to or applied for the benefit of one or more particular benevolent bodies, or (ii) applied for charitable, benevolent or philanthropic purposes". The draft regulations set out the information which must be included in agreements between professional fundraisers/commercial participators and benevolent bodies they are fundraising for, how the funds raised are to be transmitted to the benevolent body and the right of benevolent bodies to see documents relating to an agreement with a professional fundraiser/commercial participator.

The draft regulations also set out a requirement for **all** benevolent fundraisers to make a statement to potential donors setting out whether they are being paid to collect. This requirement applies not only to professional fundraisers and commercial participators, but also to in-house staff of the benevolent body and volunteer fundraisers.

The fundraising sector has been working to develop a self regulation scheme which it aims to launch in 2006 and which will run alongside these charities and benevolent fundraising regulations.

The Act also sets out a system for licensing public benevolent collections. Separate proposals for the detailed operation of the public benevolent collection process will be issued for consultation in 2006.

(iii) Rationale for government intervention

Benevolent fundraising is an evolving area and there was widespread support in the consultation on the draft Bill in 2004 to regulate fundraising for benevolent bodies through the Bill and subsequent regulations. In particular, provisions allowing benevolent bodies greater control over those fundraising for them, and the requirement for professional fundraisers and commercial participators to have an agreement with a benevolent body before fundraising on their behalf were welcomed.

21st century charity fundraising is big business. Estimates from the Scottish Council for Voluntary Organisations show that Scottish charities raise over £2 Billion a year to spend in our communities. Charities raise funds from a vast range of sources: from government grants and contracts; from Local Authorities; from the National Lottery; from other charities; from trading and investments; from corporate sponsorship; and of course from public donations (which provide around £240 million a year to charities in Scotland).

There is evidence that a small number of scandals reported in the media affected public confidence in giving to charities. The draft regulations aim to ensure transparency and accountability, and therefore help public confidence and support benevolent fundraising.

(iv) Risk assessment

The new regulations are an essential part of the implementation of the Charities and Trustee Investment (Scotland) Act 2005. Without the new regulations, the only legislation regulating benevolent fundraising in Scotland will be section 119 of the Civic Government (Scotland) Act 1982 and the regulations made under it to regulate the licensing of Public Charitable Collections (or any regulations which may be made under the 2005 Act to replace these with a system of licensing Public Benevolent Collections), and the requirement under the 2005 Act for professional fundraisers/commercial participators to have an agreement with a benevolent body before fundraising on their behalf, and the right of benevolent bodies to seek an interdict preventing unauthorised fundraising in their name.

A lack of regulation of benevolent fundraising would severely hamper the attempts to provide a transparent and straightforward regulatory framework for charities in Scotland and undermine the principles of the Charities and Trustee Investment (Scotland) Act 2005, and would not encourage public confidence in benevolent fundraising.

Consultation

Within government

The following government agencies and departments have been consulted in preparation of this partial RIA:

Office of the Scottish Charity Regulator (OSCR).

Public consultation

A public consultation is being carried out on the draft regulations on charities and benevolent fundraising from December 2005 to March 2006. The responses, and a summary, will be published before the regulations are finalised and laid before the Scottish Parliament in summer 2006.

Options

Option 1: Do nothing

This option would involve not using the powers in section 83 of the Charities and Trustee Investment (Scotland) Act 2005 to regulate benevolent fundraising. This would mean that the only legislation regulating benevolent fundraising (other than the existing public charitable collection licensing system and its replacement for licensing public benevolent collections), would be the requirement under the 2005 Act for professional fundraisers/commercial participators to have an agreement with a benevolent body before fundraising on their behalf, and the right of benevolent bodies to seek an interdict preventing unauthorised fundraising in their name.

Option 2: Implement draft charities and benevolent fundraising regulations

Implementation of the draft benevolent fundraising regulations will introduce statutory control of fundraising which will run alongside the scheme of self regulation of fundraising currently being developed by the sector. These regulations would set out the information which must be included in agreements between professional fundraisers/commercial participators and benevolent bodies they are fundraising for, how the funds raised are to be transmitted to the benevolent body and the right of benevolent bodies to see documents relating to an agreement with a professional fundraiser/commercial participator. The draft regulations also set out a requirement for **all** benevolent fundraisers to make a statement to potential donors setting out whether they are being paid to collect. This requirement applies not only to professional fundraisers and commercial participators, but also to in-house staff of the benevolent body and volunteer fundraisers.

Since these draft regulations do not use all the powers available to Scottish Ministers in section 83 of the 2005 Act, Ministers would be able to introduce further statutory

regulation of benevolent fundraising if self regulation was not felt to be sufficiently effective.

Option 3: Introduce more extensive regulations using all the powers available to Scottish Ministers to regulate charities and benevolent fundraising

An alternative to introducing a mixture of statutory and self regulation would be for the regulations to introduce a statutory regulation scheme immediately using the additional powers available to Ministers in section 83 of the 2005 Act. This would probably involve preparing a statutory code of practice to be followed by all fundraisers, with a kitemark or other mark of compliance, regulated by either OSCR or another new regulator.

Costs and benefits

Business sectors affected

All existing charities fundraising in Scotland will be affected by the proposals in the attached consultation paper. Non-charity benevolent bodies that fundraise in Scotland will also be affected since the regulations cover all benevolent fundraising. Fundraising businesses will be affected by the proposals when carrying out fundraising for benevolent bodies. Other businesses whose main business is not to fundraise, but in the course of their normal business fundraise for benevolent bodies (ie act as commercial participators) will also be affected since these activities will also be covered.

Benefits

Option 1: Do Nothing

There would be little benefit from this option. Although the sector would have fewer legislative requirements to comply with, there was widespread support from the sector during the consultation on the Draft Charities and Trustee Investment (Scotland) Bill in 2004, and during the parliamentary passage of the Bill, for the introduction of greater regulation of benevolent fundraising.

Option 2: Implement draft charities and benevolent fundraising regulations

There has been widespread support for this approach. The regulations would ensure accountability and transparency to help assist public confidence in the sector, while self regulation would cover the behaviour of the fundraisers. The regulations are flexible enough to meet the needs of different bodies and fundraisers, who may for example wish to use different types of contract. There are benefits in allowing the sector to regulate certain aspects through self regulation – a self regulation scheme would be able to adapt more quickly to meet changing needs than the regulations would be able to, and the sector hope to launch the scheme in early 2006, before regulations under the 2005 Act would come in to force. In addition, making use of the industry's plans for self-

regulation is more cost effective and ensures that the sector is closely involved in establishing the regulatory regime it will have to follow.

There is evidence that a small number of scandals reported in the media affected public confidence in giving to charities. The draft regulations aim to ensure transparency and accountability, and therefore help public confidence and support benevolent fundraising.

Option 3: Introduce more extensive regulations using all the powers available to Scottish Ministers to regulate charities and benevolent fundraising

Introducing more extensive regulations using all the powers available to Scottish Ministers in section 83 of the 2005 Act to regulate benevolent fundraising would allow Ministers greater control over benevolent fundraising. In addition, there would be no need for benevolent bodies and fundraisers to join a sector scheme of self regulation.

Costs

Option 1: Do nothing

There would be no direct costs to benevolent fundraisers in this option. This would leave no detailed requirements for benevolent fundraising in Scotland and would seriously undermine the principle of transparency which underpins the Charities and Trustee Investment (Scotland) Act 2005. There would be no greater transparency to the public because they would not be given any information about the remuneration of fundraisers and professional fundraisers/commercial participators would be no more accountable to the benevolent bodies they were fundraising on behalf of. Charity fundraising has borne the brunt of recent media attentions and public lack of confidence, and there is evidence that a small number of scandals reported in the media affected public confidence in giving to charities. Therefore, it is probably not tenable to consider the status quo of not establishing any controls on fundraising, since it may have indirect costs by leading to future decreases in public donations to benevolent bodies.

Option 2: Implement draft charities and benevolent fundraising regulations

Those undertaking benevolent fundraising will need to ensure that they are aware of, and comply with, the requirements the regulations place on them. Many benevolent fundraisers and professional fundraisers/commercial participators will face no additional costs because they already meet sector good practice requirements which cover these provisions. It has not been possible to provide accurate estimates of compliance costs, although we do not believe they will be significant, even to those who do not currently meet the requirements through following best practice. There will be no cost to benevolent fundraisers in making the statement about their remuneration. Professional fundraisers/commercial participators will need to make additional information available to potential donors if requested – the cost of producing an A4 laminate for each fundraiser to show to donors is at a quoted cost of 8 pence/sheet, and the cost of producing paper copies which could be handed out to donors who wished to take the

information away would be 15 pence/sheet based on a sample quoted cost of some £150 per 1,000 sheets.

Contracts could be drawn up for very little cost using model contracts which are widely available, such as those produced by the Institute of Fundraising. Some benevolent bodies or professional fundraisers/commercial participators may choose to seek legal advice, but that would be a decision for those concerned. Some existing contracts may need to be revised to meet the new requirements, although the proposed 6 month transitional period should limit the number affected.

The provisions allowing refunds in certain circumstances should be cost neutral to professional fundraisers and commercial participators since they are able to deduct expenses from the amount refunded. This would lead to a small cost to the donor who asked for the refund; but without these provisions they would not necessarily be entitled to a refund at all. There would also be a cost to the benevolent body in terms of the lost donation.

The cost to professional fundraisers and commercial participators of making documents available to benevolent bodies should be limited to the cost of photocopying and postage of them, with a quoted cost of 15 pence/sheet, although some benevolent bodies may not require copies to be made. The transmission of money provisions should not lead to any additional cost.

Those joining the self regulation scheme would be required to pay a small, proportionate membership fee, to be set by the body in charge of the scheme.

The Executive would welcome any information from benevolent bodies, commercial participators and professional fundraisers which indicates how much these costs might be – to be included in the final RIA.

Option 3: Introduce more extensive regulations using all the powers available to Scottish Ministers to regulate charities and benevolent fundraising

Ministers would have to develop statutory codes of conduct, which would take time and cost money and could not be implemented as quickly as self regulation, which is already well developed. Ministers have already publicly agreed to allow the scheme time to prove its worth. Making use of the industry's plans for self-regulation is more cost effective and ensures that the sector is closely involved in establishing the regulatory regime it will have to follow. It has not been possible to provide accurate estimates of compliance costs, although they are likely to be higher than those under option 2. Those who would have joined the self regulation scheme under option 2 will not have to pay a membership fee. However, all the other points raised under the cost of option 2 would apply to option 3. In addition, all benevolent fundraisers would have to comply with the statutory code of practice.

It is likely that many benevolent bodies and fundraising businesses would incur additional costs in training fundraisers to ensure that they were aware of, and able to

comply with, the legislation. In addition, it is likely the regulations would require benevolent bodies and fundraisers to display and make use of a kitemark or other mark of compliance on their fundraising material, and possibly other material also. Clearly, there would be a cost to bodies in incorporating this kitemark into the necessary documents, and in reprinting costs. Based on a sample quoted cost of some £150 per 1,000 sheets for printed letterheads etc, the cost of reprinting would be £0.15 x average no. of sheets used per year. This cost is not expected to be significant in comparison to normal administration costs. In many cases, benevolent bodies and fundraisers are likely to use PC generated documents, for which additional identification can be easily added at little or no extra cost.

The Executive would welcome any information from benevolent bodies, commercial participators and professional fundraisers which indicates how much these costs might be – to be included in the final RIA.

Consultation with small business

The regulations will apply to any professional fundraising business, or any business which acts as a commercial participator, and some of these (especially the professional fundraising businesses) may be small firms or micro-businesses. We have consulted the Federation of Small Businesses, as well as the Institute of Fundraising and PFRA (Public Fundraising Regulatory Association), both of whom represent professional fundraising businesses amongst others, about the proposals in this consultation paper. The Institute of Fundraising feels that the proposals strike the right balance and will not cause small businesses undue problems. The Federation of Small Businesses does not feel that the proposals will have a significant impact on small businesses, but stressed the need to ensure that the regulations and penalties are applied proportionately so that the relationship between small local benevolent bodies and small businesses is not jeopardised. They also queried how small businesses will know about any requirements on them. The PFRA did not raise any concerns about the cost impact of the proposals on their members since they already comply with the requirements in the draft regulations.

In addition, the consultation in 2004 on the draft Charities and Trustee Investment (Scotland) Bill included our proposals for the contract between professional fundraisers/commercial participators and benevolent bodies and a statement by them of their remuneration. This consultation paper was sent to a wide variety of bodies and individuals, as well as being available on the SE website. No concerns were raised about the impact on small businesses.

We do not envisage that any of these proposals will have a significant impact on small business. They do not prevent small businesses from undertaking benevolent fundraising; they merely set out certain procedures that must be followed. Since these procedures mirror current best practice the regulations are likely to have no impact on many small businesses who undertake benevolent fundraising, and we do not expect those who have to change their procedures slightly to meet the new requirements (such as the form of contract, or ensuring that the remuneration/amount going to the good cause is indicated) to encounter much cost or time in meeting these new proposals.

Test run of business forms

The draft regulations introduce a requirement for benevolent fundraisers or commercial participators to have a contract with any benevolent body for whom they are fundraising. However, they do not introduce a statutory business form which must be completed, but merely certain things which must be included in the contract. Therefore there is no business form which needs to be tested.

Competition Assessment

The benevolent fundraising regulations set out in the consultation paper are not expected to have any impact on competition. It will make benevolent fundraising activities more transparent, and clarify the legal requirements of charities. However it will not distort or restrict competition within markets in which fundraising/fundraisers or benevolent bodies operate.

Enforcement, sanctions and monitoring

The provisions will be enforced by the Office of the Scottish Charity Regulator (OSCR), Local Authorities, the police or other relevant regulators.

The regulator will be tasked with reviewing implementation of the legislation and regulations, and advising the Executive of any need for change. The Executive will review the impact of the regulations within ten years of them coming into force.

[The following further sections of the RIA will be completed for the final version, feeding in information from the consultation responses and the final options chosen.

Implementation and delivery plan

Post-implementation review

Summary and recommendations]

Consultation

The Charities and Trustee Investment (Scotland) Bill was developed following extensive consultation. This draft RIA and the proposals for the fundraising regulations contained in the accompanying consultation paper are now produced for comment. It has been 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 which have responded to previous Executive consultations on charity law reform.

It is also available on the Scottish Executive website consultations page (www.scotland.gov.uk/consultations).

We encourage you to submit comments on this approach, and any evidence on costs and benefits that may inform the legislative approach. We would value your comments on this RIA, along with your responses to the consultation by 10 March 2006

Contact

Any queries about this RIA should be addressed to:

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Scottish Executive
DD Charity Law Team
December 2005

RESPONDENT INFORMATION FORM: CHARITIES AND BENEVOLENT FUNDRAISING REGULATIONS CONSULTATION

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Postal Address:

1. Are you responding: (please tick one box)
- (a) as an individual go to Q2a/b and then Q4
- (b) **on behalf of** a group/organisation go to Q3 and then Q4

INDIVIDUALS

- 2a. Do you agree to your response being made available to the public (in Scottish Executive library and/or on the Scottish Executive website)?

Yes (go to 2b below)

No, not at all We will treat your response as confidential

- 2b. Where **confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

- 3 The name and address of your organisation **will be** made available to the public (in the Scottish Executive library and/or on the Scottish Executive website). Are you also content for your **response** to be made available?

Yes

No We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

- 4 We will share your response internally with other Scottish Executive policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

Yes

No