



SCOTTISH EXECUTIVE

Development Department
Voluntary Issues Unit

Social Justice Group
Victoria Quay
Edinburgh EH6 6QQ

Consultees

Telephone: 0131-244 4023
Fax: 0131-244 5508
charitybill@scotland.gsi.gov.uk
<http://www.scotland.gov.uk>

Our ref:

15 December 2005

Dear Consultee,

Consultation On The Proposals For The Scottish Charity Appeals Panel Rules

I am pleased to enclose a copy of the consultation paper Scottish Charity Appeals Panel Rules published today. The consultation paper outlines the Scottish Executive's proposals for the rules for the Scottish Charity Appeals Panel to be made under Schedule 2 of the Charities and Trustee Investment (Scotland) Act 2005.

This consultation is your opportunity to have your say about these plans before the rules are drafted and laid before the Scottish Parliament. Although we have posed specific questions on the proposals, 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 as well as the Scottish Committee of the Council on Tribunals.

Please respond to this consultation in writing or by email, attaching a completed responsee information form, to the address above by **10 March 2005**, 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

Laura Bailie
Charity Law team
Voluntary Issues Unit

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

**The Scottish Charity Appeals Panel
Consultation Paper**

**Scottish Executive
December 2005**

CONTENTS

	Page
Introduction	3
Summary of proposals and questions	8
Proposals for the draft rules	15
Partial Regulatory Impact Assessment	28

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005 CONSULTATION ON THE SCOTTISH CHARITY APPEALS PANEL

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 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 Scottish Charity Appeals Panel and the rules that will govern its procedure. The Scottish Ministers must constitute an Appeals Panel under section 75 and have powers to make rules for the Panel under schedule 2 of the Act.

Chapter 10 and Schedule 2 of the Act set out the framework for a simple way to appeal certain decisions made by OSCR or a body to which OSCR's functions are delegated under section 38 of the Act. This consultation paper deals specifically with the role of the new appeals panel in this process. Our proposals are intended to provide a simpler and cheaper means of appeal than has previously been available to charities. The partial Regulatory Impact Assessment (pp. XX of this document) sets out what we consider the impact of our proposals will be.

The consultation is your opportunity to have your say about these plans before the rules are laid before Parliament. We have highlighted key areas for comment but seek your views on all aspects of the proposals within this document.

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

Fiona Warne
Scottish Charity Appeals Panel 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 **10 March 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 Scottish Charity Appeal Panel rules. We aim to issue a report on this consultation process by the end of April 2006.

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 responses¹. 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

¹ <http://www.scotland.gov.uk/consultations>

- 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 THE SCOTTISH CHARITY APPEALS PANEL

Background and Legal Foundations

The changes in charity regulation that the Charities and Trustee Investment (Scotland) Act 2005 (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 appeals process is integral to this providing a simpler means for charities and those involved in their management to appeal decisions affecting them.

At the moment decisions made by the Court of Session under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 can be appealed to the Court of Session. This can be time consuming and expensive for charities, many of which do not have the funds to appeal. Appeals in relation the granting of charitable status can be made to Her Majesty's Revenue and Customs (Inland Revenue) Commissioners.

The new Act gives the Scottish Charity Regulator (OSCR) a number of powers to investigate and regulate charitable activity in Scotland. Section 71 of the Act sets out the decisions made by OSCR or a body to which OSCR's powers have been delegated under section 38 of the Act that can be appealed. These include: entry onto the Scottish Charity Register, directions to change the name of a charity, directions not to carry out specific activities, suspension of those in management or control of a charity (including but not exclusively charity trustees), directions to stop a body being represented as a charity and directions to financial institutions not to part with property without OSCR's consent.

The Appeals process outlined in Chapter 10 of the Act is in three stages. The first stage, in section 74, gives the person or body subject to a decision outlined in section 71 the opportunity to request that OSCR reviews that decision. OSCR then has 21 days to vary, reverse, revoke or confirm the decision. If OSCR confirms the decision it can then be appealed to the Scottish Charity Appeals Panel (the Panel) under section 76. The Panel can confirm or quash the decision or remit it back to OSCR for reconsideration. Finally, the decision made by the Panel can be appealed by the person who appealed originally or by OSCR to the Court of Session, who may quash or confirm the decision

appealed to it. The suspension of a person in management or control of a charity may be appealed directly to the Court of Session under Section 78(2).

This consultation paper focuses on the second stage of the appeals process, and the proposals for the Scottish Charity Appeals Panel and the rules it will follow are laid out in the following pages. The proposals have been compiled following the guidelines issued by the Council on Tribunals and the Scottish Committee of the Council have been sent a copy of this consultation. The final rules will be submitted to them for comment before they are laid before the Scottish Parliament.

The proposed rules issued for consultation have been drafted in some detail and it is possible that in considering the responses to the consultation and as work continues on establishing the Panel that we decide to simplify and slim down the rules further. Our intention is to provide a user friendly system which allows the Panel to deal flexibly with each individual case.

The Panel

Members of the panel will be appointed by Scottish Ministers under schedule 2 of the Act. The appointments process will be carried out following the Commission for Public Appointments code of practice although the Ministers are not bound by it for appointments to this body. Appointments will be made to a pool and then a panel of 3 will be selected by the secretariat as and when necessary, on a rota basis and taking into consideration particular expertise and any potential conflicts of interest. Each panel must be chaired by someone who is legally qualified in terms of the requirements set out in paragraph 1(2) of schedule 2.

The secretariat to the Panel

Administrative support will be provided to the Panel by a secretariat located within the Scottish Executive's Voluntary Issues Unit. This is felt to be acceptable because the Panel will not be considering appeals about the decisions of Scottish Ministers but those of OSCR as a Non Ministerial Officeholder. As part of the secretariat, a post of Registrar will be created who will be responsible for helping the Panel in drawing up guidance on the appeals process and the forms to be used when lodging an appeal or additional supporting information, as well as providing administrative support such as registering notices of appeals, arranging hearings and recording the decisions of the Panel.

Time frame for appeals

Under the terms of the Act an appeal must be made within 28 calendar days of the confirmation of the decision by OSCR. The Panel must receive both the notice of the appeal and any written statement supporting the appeal (if separate from the notice) within this period. The Panel secretariat will then have 10 calendar days to acknowledge the appeal and inform OSCR that the appeal has been lodged.

The person making the appeal must submit all the supporting information, and state whether or not they would like a hearing, to the panel within 28 calendar days of the date of the acknowledgement. OSCR must also respond within this timeframe, informing the Panel of whether it intends to contest the appeal and if it would like an oral hearing. We intend that the Panel will ask both parties to provide the dates on which they would be free to attend a hearing.

The Panel will then either reach a decision and inform both parties of that decision or will inform the parties of a date for the hearing, giving them at least 14 calendar days notice.

A diagram of the timeline is included at diagram 1 below.

We would welcome your views on the time limits set out above.

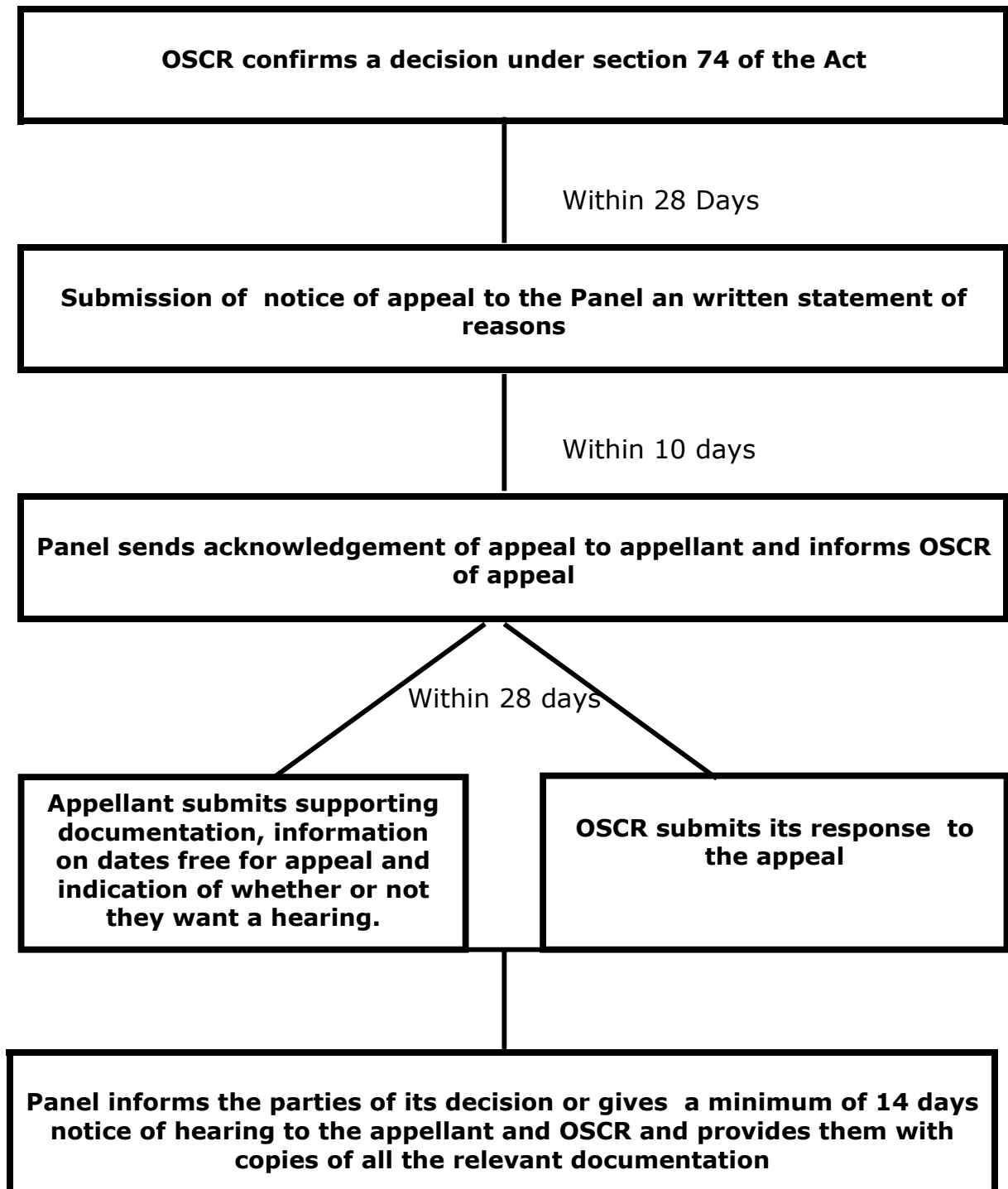
What will happen when a notice of appeal is received? (Rule 2)

When a notice of appeal is received by the panel, the details will be entered into the register of appeals, an acknowledgement will be sent to the person making the appeal or their representative and OSCR will be informed that their confirmation of a decision is being appealed. The panel will inform the parties of any further information they will need to consider the case.

The Panel secretariat will then send copies of all further information received from either party to the other as soon as possible. On receiving the necessary information the Panel may be able to reach a decision without a hearing. The Executive has always envisaged a process where most appeals would be resolved in this way, helping to keep the process as simple and cheap as possible. Either party may insist an oral hearing.

Diagram 1

Timeline for appeals to the panel.



If the Panel is satisfied that it cannot hear an appeal because, for example, the issue being appealed does not fall within the Panel's jurisdiction, it will inform the appellant of the reasons for that and give them the opportunity to respond before striking out the appeal. The Panel may also strike out any appeal which it considers to be vexatious.

An appeal can also be withdrawn at any stage but a fresh appeal may not be made about the same matter.

We welcome your views on this process and whether parties should be able to insist on an oral hearing.

What issues will the Panel consider?

We propose that the Panel will not review, assess or hear new evidence. The rules do not make any mention of this at the moment but we would be interested in your views on whether the Panel should consider evidence and if so whether it should be able to hear new evidence that was not considered by OSCRC when it undertook the review of the original decision.

In some cases the original decision will have been made by a body or person to whom OSCRC's powers have been delegated. In these cases the appeal will still be against a decision made by OSCRC as the first stage of the whole appeals process involves a request to OSCRC to review the original decision, whoever made it, and it is the confirmation of the original decision which the Panel will consider.

We would welcome views on our proposals for what issues the Panel will consider and particularly on what evidence the Panel should consider.

Hearings (Rules 7 – 16)

If a hearing is considered necessary or is insisted upon by one of the parties the Panel secretariat will fix a date for the hearing, taking into consideration the information given by both parties on their availability. The Panel must give both parties a minimum of 14 days notice of the date of the hearing and when doing so send to each

party, guidance on the procedure for the hearing and attendance at the hearing.

The hearings will be held in a venue chosen by the Panel secretariat and will be held in public unless a private hearing is specifically requested by one of the parties. When choosing the location the Panel secretariat will consider the convenience of all the parties involved.

For the whole appeals process the parties may conduct their own case or chose to be represented by someone else. The representative does not have to be legally qualified but the Panel may refuse to allow a particular person to represent a party if it is satisfied that there is good reason to do so.

Parties do not have to attend or be represented at the hearing but they must inform the panel as soon as possible that they will not be present. Whether or not the Panel is informed by a party that they do not intend to be present, the Panel may continue with the hearing if it is satisfied that the party was given due notice that the hearing was taking place.

Witnesses

Witnesses may be summoned to give evidence for either party at the Panel's discretion but the amount of involvement and relevance of witness testimony will depend to a large extent on whether the Panel can consider new evidence or not.

Decisions (Rules 17 & 18)

Decisions can be taken by a majority of the panel and a copy of the document recording the decision will be sent to the parties involved. The decision must also be published by being announced at the public hearing or by being published in writing.

Expenses (Rule 19)

Following discussions during the passage of the Bill through Parliament the Act provides that the rules may include provision for the payment of expenses. We intend the rules to provide that the Panel may award expenses if it considers the decision against which the appeal was

made was unreasonable, if costs have been incurred by a party due to the postponement or adjournment of the appeal at the request of the other party or if a party amends its case late or introduces late evidence. The Panel may also award expenses against a party if it withdraws its appeal, if it has acted vexatiously or if its conduct in making the appeal was unreasonable.

We would welcome your views on the provision for the award of expenses and whether there should be a maximum sum up to which expenses can be awarded by the Panel.

The regulatory impact assessment (RIA)

The RIA on page 28 is our assessment of the impact the rules will have. We would like your views on the accuracy of this assessment and would welcome any further information you could provide that could be added to the final version.

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005 CONSULTATION ON DRAFT SCOTTISH CHARITY APPEALS PANEL

PROPOSALS FOR THE DRAFT RULES

Notice of appeal and reasons for appeal

1. – (1) An appeal to the Panel in terms of section 76 of the Charities and Trustee Investment (Scotland) Act 2005 must be made be in writing and specify –

(a) the name and address of the person making the appeal (“the appellant”);

(b) the date and reference number of the decision against which the appeal is brought (here called the “notice of confirmation or reconfirmation”), and the date OSCR confirmed or reconfirmed the decision.

(d) the name and address, and the profession, of the representative of the appellant, if any, and whether the Panel should send replies or notices concerning the appeal to the representative instead of the appellant; and

(e) unless they are to be given in a separate written statement, the reasons for the appeal.

(2) The appellant must attach to the notice of appeal a copy of the notice of confirmation or reconfirmation.

(3) The appellant or the appellant’s representative must sign the notice of appeal.

Acknowledgement and registration of appeal

2. – (1) Upon receiving a notice of appeal, the Panel must within 10 days-

(a) send an acknowledgement of the receipt of the notice of appeal to the appellant and to OSCR;

(b) enter particulars of the notice of appeal in the register;

(c) inform the appellant (or representative) that within 28 days from the date of the acknowledgement of the notice of appeal they must submit to the Panel, written statements and any supporting documentation;

- (d) inform OSCR that within 28 days from the date of the acknowledgement of the notice of appeal, it must confirm whether it intends to attend at any appeal hearing and, if it so intends to do, to send to the Panel a statement summarising the facts relating to the decision which is subject to the appeal.
- (2) The Panel may then be in a position to make a decision without a hearing and if this is the case they must notify the appellant and respondent to give parties an opportunity to insist on a hearing.
- (3) If the Panel considers that a hearing should take place, the Panel must give the appellant and respondent not less than 14 days notice of the hearing date, time and venue and this notification must be accompanied by –
- (a) notification that a statement of general procedural advice in relation to the proceedings may be obtained from the office of the Panel and of other sources of advice;
 - (b) a statement that if the appellant requests a hearing in private or does not want an oral hearing, the appellant must notify the Panel as soon as possible.

Distribution of documents by Panel

- 3.** (1) The Panel must as soon as possible after receipt by it, send a copy of any document received from a party to the other party to the proceedings.

Withdrawal of appeal

- 4.** – (1) The appellant may withdraw the appeal-
- (a) at any time before the hearing of the appeal, by sending written notice of the withdrawal to the Panel; or
 - (b) at the hearing of the appeal,
- (2) Where an appeal is withdrawn, no further appeal may be made in relation to the same decision.

Disclosure and inspection of documents

- 5.** – (1) Subject to paragraphs (2) and (3) of this Rule, the Panel may give directions

- (a) requiring a party to deliver to the Panel any document which the Panel may require and which it is in the power of that party to deliver, and the Panel must make the provision it thinks necessary to supply copies of any document obtained under this Rule to the other parties to the proceedings; or
 - (b) granting to a party the right to inspect and take copies of any document which it is in the power of a party to disclose, and appointing the time at or within which and the place at which any such act is to be done.
- (2) Paragraph (1) does not apply in relation to any document which the party could not be compelled to produce on the trial of an action in a court of law in that part of the United Kingdom where the appeal is to be decided.
- (3) In giving effect to this rule, the Panel must take into account the need to protect any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence.
- (4) It shall be a condition of the supply of any document under this Rule that a party must use the document supplied only the purposes of the proceedings.

Directions

- 6.** (1) At any stage of the proceedings the Panel may, either on its own initiative or on the application of a party, make such direction as it considers necessary for the hearing of the appeal and in particular may direct a party to an appeal-
- (a) to provide any further particulars or supplementary statements or to produce any documents which may reasonably be required;
 - (b) where a party has access to information which is not reasonably available to the other party, direct the party who has access to the information to prepare and file a document recording the information;
 - (c) set out the issues upon which the Panel requires to hear evidence;
 - (d) by direction exclude evidence that would otherwise be admissible if the evidence is irrelevant, unnecessary or improperly obtained;

- (e) by direction limit cross-examination
- (f) direct any party to lodge before the hearing an outline argument; or
- (g) give any direction necessary for the exercise of any of the powers conferred by these Rules.

(2) When a document required under paragraph (1)(b) has been filed, the Panel must send a copy of it to any other party;

(3) An application by a party for a direction under paragraph (1) (otherwise than during a hearing) must be made to the Registrar in writing or by any other means the Panel may accept and must set out the direction which the applicant is seeking to have made and the reasons for the application. Unless it is accompanied by the written consent of all the parties, a copy of the application must be sent by the Registrar to any other party who may be affected by the direction. If any party objects to the direction sought, the Panel must consider the objection and, if it considers it necessary for deciding the application, must give the parties an opportunity of being present or represented before it.

Notice of date, time and place

7. (1) The Panel must, with due regard to the convenience of the parties, fix the date, time and place of an oral hearing and, where appropriate, set a timetable for the hearing and, not less than 14 days before the date fixed (or a shorter time if agreed by the parties), send to each party a notice that the hearing is to be on that date and at that time and place and the details of any timetable for the hearing.

(2) The Panel must include with the notice of hearing

- (a) information and guidance, in a form approved by the Panel, as to attendance at the hearing of the parties and witnesses, the bringing of documents, and the right of representation or assistance by another person and the procedure applicable to the hearing, having regard to any applicable rules of evidence and burden and standard of proof;
- (b) a statement of the right of the parties to receive reasons in writing for a decision of the Panel;
- (c) a statement explaining the possible advantages of attendance, consequences of non-attendance, and the right of an appellant and of any respondent who has presented a reply,

who is not present and is not represented, to make representations in writing; and

(d) a request to be informed of any special needs, such as for wheelchair access, which any party may have.

(3) When a party receives the notice of the date, time and place of the hearing, he or she must inform the Panel whether or not he or she intends to be present or represented at the hearing, and whether he or she intends to call witnesses.

(4) If a party does not intend to be present or represented at the hearing, he or she may send to the Registrar additional written representations in support of his or her case.

Alteration of date, time or place and adjournments

8. (1) The Panel may alter the date, time or place of any oral hearing and the Registrar must give the parties not less than 7 days (or a shorter time if the parties agree) notice of any such alteration: but any altered hearing date must not (unless the parties agree) be before the date notified under rule 7.

(2) The Panel may from time to time adjourn the oral hearing and, if the date, time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required.

(3) When any hearing is adjourned in order that further information or evidence may be obtained, the Panel may give directions regarding the disclosure of the information or evidence to, and the filing of comments on the information or evidence by, the parties prior to the resumption of the hearing.

Procedure before the Panel

9. (1) The Panel shall determine the manner in which appeals shall be heard before it.

(2) Prior to the hearing of the appeal, the Panel shall inform parties to the appeal of –

- (a) the members of the Panel;
- (b) the conduct expected of parties at the hearing;

(c) the manner and order of proceeding, having regard to any applicable burden and standard of proof and rules of evidence.

(3) It shall be the duty of the Panel to assist any party who seems to it to be unable to make the best of his or her own case without advocating the course that he or she should take.

Absence of member of the Panel

10. If, after the commencement of any hearing, a member other than the Chair is absent, the appeal may, with the consent of the parties, be heard by the other two members and, in that event, the Panel shall be deemed to be properly constituted.

Hearings in public or in private

11. (1) All hearings by the Panel must be in public except-

(a) where the Panel is satisfied that a private hearing is required in the interests of morals, public order or national security in a democratic society, the interests of juveniles or the protection of the private lives of the parties, or to the extent strictly necessary in the opinion of the Panel in special circumstances where publicity would prejudice the interests of justice; or

(b) where a party has requested in writing that the hearing be in private if the Panel is satisfied that there is no important public interest consideration that calls for the public to be present.

(2) The Panel may decide under paragraph (1) that part only of the hearing shall be in private or that information about the proceedings before the Panel, the names and identifying characteristics of persons concerned in the proceedings or specified evidence given in the proceedings shall not be made public or disclosed to a party or parties.

(3) Without prejudice to any other rule of law, the Panel may prohibit photography at any hearing if satisfied that such a prohibition is desirable in order to ensure a fair hearing.

Representation

12. At any hearing a party may conduct his or her case (with assistance from any person if he or she wishes) or may be represented

by any person whether or not legally qualified but if in any particular case the Panel is satisfied that there is a good reason, it may refuse to permit a particular person to assist or represent a party at the hearing.

Persons entitled to be present

13. (1) The following persons shall be entitled to attend a hearing and the Panel's deliberations on the hearing, whether or not it is in private:

- (a) the Chair or member of the Panel not forming part of the Panel for the purpose of the hearing;
- (b) a member of the Scottish Committee of the Council on Tribunals;
- (c) the staff of the Panel; and
- (d) any other person permitted by the Panel with the consent of the parties.

None of the persons specified above who are present at the Panel's deliberations may take any part in the deliberations.

(2) Where the Panel sits in private it may admit persons to the hearing on such terms and conditions as it considers appropriate.

Exclusion of persons disrupting proceedings

14. (1) Without prejudice to any other powers it may have, the Panel may exclude from any hearing, or part of it, any person (including a party or the party's representative) whose conduct has disrupted the hearing or whose conduct has otherwise interfered with the administration of justice.

(2) In deciding whether to exercise the power conferred by paragraph (1) the Panel must, apart from other considerations, have regard to the-

- (a) interests of the parties;
- (b) in the case of the exclusion of a party, the extent to which the proceedings involve an assessment of the party's conduct, personal character or manner of life; and
- (c) in the case of the exclusion of a party or a party's representative, whether the party will be adequately represented.

(3) If the Panel decides to exclude a party it must allow the party's representative sufficient opportunity to consult the party.

Failure of parties to attend

15. (1) If a party fails to be present or represented at a hearing, the Panel may, if it is satisfied that the party was duly notified of the hearing and that there is no good reason for such absence-

- (a) hear and decide the appeal in the party's absence; or
- (b) adjourn the hearing; and may give directions as it thinks fit (including orders for the payment of costs and expenses).

(2) Before deciding to dispose of any appeal in the absence of a party, the Panel must consider any representations in writing submitted by that party in response to the notice of hearing and, for the purpose of this rule, the appeal and any reply shall be treated as representations in writing.

(3) Where an appellant has failed to be present or represented at a hearing of which he or she was duly notified, and the Panel has disposed of the appeal, no fresh appeal may be made by the appellant to the Panel in relation to the decision.

Inability to attend through physical or mental sickness or impairment.

16. If the Chair is satisfied that any party is unable, through physical or mental sickness or impairment, to attend the Panel and that the party's inability is likely to continue for a long time, the Chair may make such arrangements as may appear best suited, in all the circumstances of the case, for disposing fairly of the appeal, and in particular may arrange:

- (a) for the party to be visited at some convenient place by one or more members of the Panel, or by other persons appointed for the purpose by the Chair, for the purpose of recording the party's evidence and any statement he or she may wish to make or for the party to be medically examined;
- (b) for taking, whether before the Panel or otherwise, the evidence of medical or other witnesses on behalf of the party and the other party or parties, and in particular the evidence of the near relative, guardian or other representative of the party;

- (c) for enabling the party's representative and the other party or parties to comment, whether at a hearing of the Panel or in writing, on the evidence so taken and to make a statement in writing or to address the Panel;
- (d) for the hearing of the appeal/application to take place at the party's home, hospital or elsewhere convenient to the party; or
- (e) for the appeal/application to be decided in the absence of the party:
but any arrangement made under paragraph (a), (b) or (d) must make provision for the other party or parties and their representatives, if they so wish, to be present while the evidence of the party or his or her witnesses is taken and to ask questions of the party or the witnesses.

Decision of the Panel

17. (1) A decision of the Panel may be taken by a majority and the decision must record whether it was unanimous or taken by a majority.

(2) Where the Panel is constituted by two members, the Chair shall have a second or casting vote.

(3) A decision of the Panel-

- (a) may be given orally at the end of the hearing or reserved;
- (b) whether there has been a hearing or not, must be recorded as soon as possible in a document which [save in the case of a decision by consent] must also contain a statement of the reasons in full form for the decision; and
- (c) must be signed by the Chair and dated.

(4) The Panel must send a copy of the decision to each party.

(5) Where any decision refers to any evidence that has been heard in private, the material relating to that evidence must be omitted from the register as the Panel may direct, but copies of the complete document must be sent to the parties together with a copy of the entry.

(6) Every copy of the decision sent to the parties under this rule must be accompanied by a notification of any provision of the Act relating to

appeals from the Panel and of the time within which and place at which an appeal or any application for permission to appeal must be made.

(7) Except where a decision is announced at the end of the hearing, it shall be treated as having been made on the date on which a copy of the decision is sent to the appellant.

Publication

18. (1) The Panel must make arrangements for the public pronouncement of its decisions, whether by giving its decisions orally at a public hearing or by publishing its decisions in writing.

(2) The Panel may exclude from public pronouncement or publishing particulars of any decisions in the interests of morals, public order or national security in a democratic society, the interests of juveniles or to the extent strictly necessary in the opinion of the Panel in special circumstances where publicity would prejudice the interests of justice. For this purpose the Panel may make any necessary amendments to the text of a decision.

Orders for expenses

19. (1) The Panel may make an order awarding costs and expenses, subject to paragraph (2)-

- (a) against a party (including a party who has withdrawn his or her appeal or reply) if it is of the opinion that that party has acted vexatiously or that the party's conduct in making, pursuing or resisting an appeal was unreasonable; or
- (b) against OSCR, where it considers that the decision against which the appeal is made was unreasonable; or
- (c) as respects any costs or expenses incurred, or any allowances paid, as a result of a postponement or adjournment of a hearing at the request of a party;
- (d) as respects any costs or expenses incurred as a consequence of the late amendment of reasons for an appeal or reply or the late introduction of evidence.

(2) No order may be made under paragraph (1) against a party without first giving that party an opportunity of making representations against the making of the order.

(3) An order under paragraph (1) shall require the party against whom it is made to pay the other party or parties either a specified sum in respect of the costs and expenses incurred by that other party in connection with the proceedings or the whole or part of those costs and expenses as assessed by the auditor of the Sheriff Court unless otherwise agreed between the parties.

The register

20. (1) A register must be kept by the Panel and must be open to the inspection of any person without charge.

(2) Details of all decisions of the Panel must be included in the register including the full reasons for the decisions.

(3) The Panel must include in the register a list of all appeals giving the names and addresses of the parties, brief details of the subject matter of the appeal, if an oral hearing is to be held, the date, time and place fixed for the hearing and, if not, the date the appeal is to be decided without a hearing.

(5) Subject to paragraph (6), the Panel must make provision for inspection at all reasonable hours of the list referred to in paragraph (4) by any person without charge.

(6) The Chair of the Panel may exclude from inspection under paragraphs (1) and (5) particulars of any decision or appeal in the interests of morals, public order or national security in a democratic society, the interests of juveniles or the protection of the private lives of the parties, or to the extent strictly necessary in the opinion of the Panel in special circumstances where publicity would prejudice the interests of justice.

Irregularities

21. (1) Any irregularity resulting from failure to comply with any provision of these Rules or of any direction of the Panel before the Panel has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the Panel, the Panel may give any directions it thinks just before reaching its decision to cure or waive the irregularity.

(3) Clerical mistakes in any document recording a direction or decision of the Chair or Panel, or errors arising in such a document from an accidental slip or omission, may be corrected by the Panel by certificate in writing.

Signature of documents

22. Where any of these Rules requires a document to be signed, that requirement shall be satisfied if the signature is written (including being produced by computer or other mechanical means), and, in any case, the name of the signatory appears beneath the signature in such a way that he or she may be identified.

Proof of documents and decisions

23. (1) Any document purporting to be a document duly executed or issued by or on behalf of the Panel shall, unless the contrary is proved, be deemed to be a document so executed or issued as the case may be.

(2) A document purporting to be certified by the Registrar to be a true copy of any entry of a decision in the register shall, unless the contrary is proved, be sufficient evidence of the entry and of the matters contained in it.

Method of delivering and receipt of documents

24. (1) Any document required or authorised by these Rules to be delivered to the Panel or any other party to the appeal shall be duly delivered to the Panel or other party

(a) if it is sent to the proper address of the Panel or other party by post by special delivery, recorded delivery or otherwise with proof of posting;

(b) if it is sent to that person, body or authority at that address by fax or telex or other means of electronic communication which produces a text when the text of it is received in legible form; or

(c) if it is delivered to or left at the proper address of that person, body or authority: but it will only be duly sent by fax or

other means of electronic communication if the recipient consents in writing to the use of that means.

(2) For the purposes of the proviso to paragraph (1) a legal representative shall be deemed to consent in writing if the reference or address for the means of electronic communication is shown on the legal representative's notepaper.

(3) If a document required or authorised to be delivered to any person, body or authority is sent by special delivery or recorded delivery or otherwise with proof of posting, it shall be taken to have been delivered on the date on which it is received for despatch by the Royal Mail.

(4) Any document required or authorised to be delivered may-

- (a) in the case of an incorporated company or other body registered in the United Kingdom, be delivered to the secretary or clerk of the company or body;
- (b) in the case of a company or other body incorporated outside the United Kingdom, be delivered to the person authorised to accept it;
- (c) in the case of a partnership, be delivered to any partner; or
- (d) in the case of an unincorporated association other than a partnership, be sent or delivered to any member of the governing body of the association.

(5) The proper address of any person, body or authority to whom any document is required or authorised to be delivered is-

- (a) in the case of a secretary or clerk of an incorporated company or other body registered in the United Kingdom, that of the registered or principal office of the company or body;
- (b) in the case of the person authorised to accept it on behalf of a company or other body incorporated outside the United Kingdom, the address of the principal office or place of business of that company or other body in the United Kingdom;
- (c) in the case of the Registrar or the Panel the address of the office of the Registrar; or
- (d) in the case of any other person, the usual or last known address of that person.

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005 CONSULTATION ON DRAFT SCOTTISH CHARITY APPEALS PANEL

PARTIAL REGULATORY IMPACT ASSESSMENT

Introduction

This partial Regulatory Impact Assessment aims to provide information on the options considered in relation to the Scottish Charity Appeals Panel set up under the Charities and Trustee Investment (Scotland) Act 2005 (the Act) and their likely impact on the 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. The Charities and Trustee Investment (Scotland) Act received Royal Assent in July this year. This partial Regulatory Impact Assessment (RIA) forms part of the consultation paper setting out the Executive's proposals for the Scottish Charity Appeals Panel and the rules for its procedure.

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 Panel will only consider decisions made under the Charities and Trustee Investment (Scotland) Act 2005 relating to charitable activity in Scotland.

(ii) The background

The Charities and Trustee Investment (Scotland) Act 2005 received Royal Assent on 14 July 2005. Proposals for the Bill were consulted on

during the summer of 2004. The introduction of an Appeals Panel to hear appeals against the decisions made under the Act was widely welcomed during the consultation on the Bill and its passage through Parliament.

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

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

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

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

(iii) Rationale for government intervention

Without the rules for its procedure the Panel would not be able to function and we would not be able to bring into force the Appeals process envisaged in the Act. This would leave charities with no means

of appeal against OSCR's decisions. Charities and trustees would be able to appeal to the Public Services Ombudsman or the Court of Session but only if there were administrative problems with the way OSCR made the decision, the validity of the decision itself could not be appealed.

(iv) Risk assessment

The appeals panel is an essential part of the implementation of the Charities and Trustee Investment (Scotland) Act. Without the rules the panel will not be able to function and an important counterbalance to the increased regulation which charities will face is lost. An essential part of the introduction of the Act was that it should provide transparency and reassurance for the public without over burdening the charities. If the appeals panel cannot be constituted then we lose a part of the Act which was particularly welcomed by the sector and the careful balance maintained in the drafting of the Act is lost.

Consultation

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 Scottish Charity Appeals Panel rules from December 2005 to March 2006. The responses, and a summary, will be published before the rules are finalised and laid before the Scottish Parliament in spring 2006.

Options

Option 1: Do nothing

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

Option 2: Implement rules for the Scottish Charity Appeals Panel

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

Costs and benefits

Business sectors affected

All charities operating in Scotland will be subject to the new Act and any charity which wishes to may appeal the decisions listed in section 71 of the Act and will therefore be affected. In addition any body which applies to OSCR to be registered as a charity can appeal a decision not to register them. Third parties do not have a right of appeal under part 10 of the Act.

Benefits

Option 1: Do Nothing

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

Option 2: Implement draft Scottish Charity Appeals Panel rules

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

Costs

Option 1: Do nothing

While there are no direct costs related to this option, it would leave charities with no appeal mechanism. Many of the decisions which could be appealed if the Panel was set up, could have significant financial

implications for charities and bodies denied charitable status, by impacting on their ability to raise money both through loss of reputation and through not being recognised as a charity. Not implementing the rules for the Panel and therefore preventing it from operating, would stop charities who felt a decision was wrong from being able to publicly clear their name and restore their reputation.

Option 2: Implement draft Scottish Charity Appeals Panel rules

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

If a person appealing a decision chooses to be legally represented they will incur costs for lodging of the necessary paperwork on time and for appearances at any hearing or preliminary hearing. The Executive's intention is that many cases will be able to be dealt with without the need for a hearing which should keep costs to a minimum, however, if the Panel consider a hearing is necessary this would increase the cost of appealing.

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

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

Consultation with small business

Only those directly affected by the decisions will be able to appeal them and the rules will therefore only affect charities, bodies denied charitable status, OSCR and the panel itself. It is not anticipated that they will have any impact on small businesses. However, we would welcome any comments from small businesses if they think there would be an impact on them.

Test run of business forms

There are no statutory business forms introduced by these rules.

Competition Assessment

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

Enforcement, sanctions and monitoring

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

[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 rules 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.

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:

Fiona Warne

Scottish Charity Appeals Panel 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

Scottish Executive
DD Charity Law Team
November 2005

RESPONDENT INFORMATION FORM: SCOTTISH CHARITY APPEALS PANEL

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