EXECUTIVE NOTE

The Charity Test (Specified Bodies) (Scotland) Order 2006 SSI/2006/

1. The above instrument was made in exercise of the powers conferred by section 7(5) of the Charities and Trustee Investment (Scotland) Act 2005. The instrument is subject to affirmative resolution procedure.

Policy Objectives

2. The purpose of the instrument is to exempt named bodies from the independence test and the asset distribution test set out in section 7(4) of the Charities and Trustee Investment (Scotland) Act 2005 (the Act).

3. In terms of section 7(4) of the Act, a body with a constitution which allows distribution/application of assets to non-charitable purposes (the asset test in section 7(4)(a)) or direction/control by Ministers (the independence test in section 7(4)(b)) from meeting the charity test.

4. During Stage 1 of the Parliamentary process Scottish Ministers agreed that the 5 national collections NDPBs (National Library, National Galleries, National Museums, Royal Commission of Ancient and Historic Monuments and Royal Botanic Garden Edinburgh) should be allowed to retain their charitable status, despite being subject to Ministerial power of direction, because of the unique role they play in Scottish society and the importance of Scottish Ministers' retaining control over the collections they hold. Section 7(5) of the Act allows Scottish Ministers to exempt, by order, bodies from the asset test in section 7(4)(a) as well as the independence test in section 7(4)(b).

Consultation

5. The following were consulted during the preparation of the instrument:-

- Scottish Executive sponsor divisions and relevant Scottish Ministers for all the 12 NDPBs with existing charitable status,
- Scottish Executive divisions and relevant Scottish Ministers dealing with Further Education Colleges.

6. In addition, this issue was widely discussed during the Parliamentary passage of the Charities and Trustee Investment (Scotland) Bill during 2005 by, amongst others, the Communities Committee, the Deputy Minister for Communities and a number of others who gave evidence to the Communities Committee during Stage 1.

Financial Effects

7. The instrument has no direct financial impact on the bodies it is exempting, since it is not conferring charitable status on these bodies, but merely exempting them from meeting certain requirements in the charity test in section 7 of the Charities and Trustee Investment (Scotland) Act 2005. A Regulatory Impact Assessment is not therefore necessary.

Scottish Executive Development Department
16 February 2006