EXECUTIVE NOTE

THE PROTECTION OF CHARITIES ASSETS (EXEMPTION) AND THE CHARITY TEST (SPECIFIED BODIES) (SCOTLAND) AMENDMENT ORDER 2008

SSI 2008/DRAFT

The above instrument was made in exercise of the powers conferred by sections 7(5) and 19(8) and (9) of the Charities and Trustees Investment (Scotland) Act 2005 ("the 2005 Act"). The instrument is subject to affirmative resolution procedure.

Policy Objectives

Amendment to the Protection of Charities Assets (Exemption) (Scotland) Order 2006

Section 19 of the 2005 Act locks the assets of any body removed from the Scottish Charity Register into charitable purposes. The body has a continuing duty, despite removal, to ensure specified sections of the Act are complied with in relation to the property. Section 19 also allows the Office of the Scottish Charity Regulator (OSCR) to apply to the Court of Session to approve a scheme for the transfer to a specified charity of any property or income belonging to a body removed from the Register and which is locked into charitable purposes under section 19. Section 19(8) allows Scottish Ministers to exempt named bodies, by order, from these requirements.

The Protection of Charities Assets (Exemption) (Scotland) Order 2006 ("the 2006 Order") exempts all 13 charitable NDPBs, all Further Education (FE) Colleges and all Higher Education Institutions (HEIs) from these requirements in order to protect Government money invested in these bodies and help ensure that they can continue to carry out their function if they were to lose their chartable status.

Articles 2 and 3 of this instrument amend the Schedule of the 2006 Order to reflect a number of changes to the list of FE Colleges and HEIs. The modifications are to:

- substitute "The Board of Management of Adam Smith College, Fife" with "The Board of Management of the Adam Smith College, Fife", to correct a minor error;
- substitute "The Board of Management of Glasgow College of Nautical Science" with "The Board of Management of Glasgow College of Nautical Studies", to correct a minor error;
- substitute "The Board of Management of Central College of Commerce" with "The Board of Management of Central College Glasgow" following Ministers' consent to this name change; and
- remove the "higher education institution" and "governing body" entries for Napier University and insert entries for "Edinburgh Napier University", as a result of the University resolving to change its name on 16 June 2008 and the Privy Council consenting to the name change by letter dated 23 September 2008.

Amendment to the Charity Test (Specified Bodies) (Scotland) Order 2008

The Charity Test (Specified Bodies) (Scotland) Order 2008 ("the 2008 Order") disapplied section 7(4)(b) of the 2005 Act to exempt the further education bodies listed in the Schedule

from the independence requirement of the charity test. Scottish Ministers decided that the incorporated Further Education colleges should be allowed to retain their charitable status, despite being subject to Ministerial powers of direction because of their unique governance structure; the distinctive role they play in Scottish society; the significant amount of public funding invested in them; and the importance of Scottish Ministers' retaining control over college powers and constitutions to ensure that they continue to operate within a framework which reflects the policies and priorities of the government of the day. Section 7(5) of the Act allows Scottish Ministers to exempt, by order, bodies from the independence requirement in section 7(4)(b).

Article 4 of this instrument amends the Schedule to the 2008 Order to substitute the entry "(k) The Board of Management of Central College of Commerce" with "(k) The Board of Management of Central College Glasgow", as a result of the College changing its name.

Consultation

The Office of the Scottish Charity Regulator and the Scottish Government Division responsible for charity law were consulted during the preparation of this instrument.

Financial Effects

A Regulatory Impact Assessment has not been prepared as this instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government, Lifelong Learning Directorate
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