EXECUTIVE NOTE

The Protection of Charities Assets (Exemption) (Scotland) Order 2006 SSI/2006/

1. The above instrument was made in exercise of the powers conferred by section 19(8) and (9) of the Charities and Trustee Investment (Scotland) Act 2005 (the Act). The instrument is subject to affirmative resolution procedure.

Policy Objectives

2. The purpose of the instrument is to allow Scottish Ministers, rather than the Office of the Scottish Charity Regulator (OSCR), to protect assets belonging to named bodies, and bought with public funds, if the body ceases to be a charity.

3. Section 19 of the 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 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.

4. This instrument exempts all 12 charitable NDPBs, all Further Education Colleges and all Higher Education institutions from these requirements in order to protect Government money invested in these bodies and help ensure that they can continue to carry out their functions if they were to lose their charitable status. This will allow Scottish Ministers, rather than OSCR, to protect assets bought with public funds if a body ceases to be a charity.

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 and Higher Education institutions.

Financial Effects

6. The instrument has no direct financial impact on the bodies it is exempting from the requirements in section 19 of the Charities and Trustee Investment (Scotland) Act 2005. The exemption from the protection of asset provisions in section 19 will ensure that Scottish Ministers, rather than OSCR, retain control of the assets of any of the listed bodies should they lose their charitable status. This has no financial impact on these bodies, and simply ensures that Scottish Ministers retain control over public funds. A Regulatory Impact Assessment is not therefore necessary.

Scottish Executive Development Department
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