Draft Order laid before Parliament under section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, the Scotland Act 1998 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No.

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
CHARITIES

The Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006

Made - - - - 2006

Coming into force in accordance with article 1

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113 of the Scotland Act 1998(**1**);

In accordance with section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006.

(2) Subject to paragraph (3), this Order shall come into force on the day after the day on which it is made.

(3) Articles 4 and 5 and the Schedule shall come into force on 1st April 2006.

(4) In this Order, "the Act" means the Charities and Trustee Investment (Scotland) Act 2005(**2**).

Status of the Office of the Scottish Charity Regulator

2.—(1) For the purposes of the Scotland Act 1998, the offices in the Scottish Administration which are not ministerial offices shall be deemed to include the office known as the Office of the Scottish Charity Regulator.

(**1**) 1998 c. 46.
(**2**) 2005 asp 10.

(2) Notwithstanding section 51(2) of the Scotland Act 1998, service as the holder of the Office of the Scottish Charity Regulator shall not be service in the Home Civil Service.

Information sharing

3.—(1) For the purpose of enabling or assisting OSCR to exercise its functions, the Commissioners may disclose to OSCR any information concerning a recognised body which they have acquired in the performance of their functions.

(2) A person who, without the agreement of the Commissioners, discloses to another person information which has been disclosed to OSCR under paragraph (1) shall be guilty of an offence.

(3) It is a defence for a person charged with an offence under paragraph (2) of disclosing information to prove that he reasonably believed–

(a) that the disclosure was lawful; or

(b) that the information had already and lawfully been made available to the public.

(4) Where OSCR is charged with an offence under paragraph (2), it is not a defence that the disclosure of information was one falling within section 25(1)(a) of the Act.

(5) A person guilty of an offence under paragraph (2) shall be liable–

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both; or

(b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

(6) In this article–

(a) "the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

(b) "OSCR" means the holder of the office known as the Office of the Scottish Charity Regulator; and

(c) "recognised body" means a body–

(i) which meets the charity test in section 7(1) of the Act;

(ii) which is recognised by the Commissioners as qualifying for relief under section 505 of the Income and Corporation Taxes Act 1988(**3**);

(iii) which has at any time applied, or been accepted as qualifying, for such relief and which is managed or controlled wholly or mainly in or from Scotland; or

(iv) such as is described in section 28(1)(b) of the Act.

Action by appropriate registrar

4.—(1) On receipt of documents sent by OSCR under section 58(1)(b) (conversion into a Scottish charitable incorporated organisation) of the Act, the appropriate registrar shall–

(a) register those documents; and

(b) cancel the registration of the company under the Companies Act 1985(**4**), or of the society under the Industrial and Provident Societies Act 1965(**5**),

(**3**) 1988 c. 1. Section 505 was amended by the Finance Act 1988 (c. 39), Schedule 14, Part V; the Taxation of Chargeable Gains Act 1992 (c. 12), Schedule 10, paragraph 14(31); the Finance Act 1995 (c. 4), section 138 and Schedule 17, paragraph 7; the Finance Act 1996 (c. 8), section 146, Schedule 7 and Schedule 41; the Finance Act 2000 (c. 17), Schedule 40, Part II(1); the Finance Act 2002 (c. 23), Schedule 30, paragraph 3 and the Income Tax (Trading and Other Income) Act 2005 (c. 5), Schedule 1, paragraph 198.
(**4**) 1985 c. 6.
(**5**) 1965 c. 12.

and shall notify OSCR that this has been done.

(2) In this article–

(a) "appropriate registrar" has the meaning assigned by section 58(7) of the Act; and

(b) "OSCR" has the meaning assigned by article 3(6)(b).

Modifications

5. The modifications specified in Parts 1 and 2 of the Schedule shall have effect.

Parliamentary Under Secretary of State Scotland Office,
Department for Constitutional Affairs,

Dover House,London
2006