EXECUTIVE NOTE
The Charity Accounts (Scotland) Regulations 2006 (S.S.I. 2006/218)

1. The above regulations were made in exercise of the powers conferred by section 44(4) and (5) of the Charities and Trustee Investment (Scotland) Act 2005 ("the Act"). The regulations are subject to negative resolution procedure.

Policy Objectives

2. The purpose of the regulations is to make further provision about the accounting records charities must keep, the statement of accounts they must prepare at the end of each financial year and the audit or examination of those accounts that must be undertaken.

3. On commencement of the Act, new accounts regulations laying down the specific accounting requirements for charities need to replace the current regulations. This provides an opportunity to update the law to take account of current accounting standards and also to deregulate the sector while still providing the necessary transparency and accountability. The intention of the Act is to establish a regulatory framework that is proportionate, accountable, transparent and consistent and the Charity Accounts (Scotland) Regulations 2006 are an important part of this.

4. The regulations apply to accounts prepared for financial years of charities which start on or after 1 April 2006. The regulations will come into force on 17 May 2006. This is felt to be acceptable because no charity will be disadvantaged or prosecuted for actions taken prior to the regulations coming into force as the earliest a charity would have to produce accounts under the regulations is October 2007. It is important that the regulations apply to charities with financial years starting on or after 1 April because a large number of charities have financial years which start on the 1 April. If the regulations were to apply to financial years starting on 17 May 2006 a large number of charities would not be able to take advantage of the de-regulation provided by the increases in the income thresholds until 2008. Transitional provisions have been put in place in the Charities and Trustee Investment (Scotland) Act 2005 (Commencement No 3, Transitional and Savings Provision) Order 2006 which commenced section 44 of the Act to ensure the current regulations continue to apply until all charities are subject to these new regulations.

5. The regulations provide for different types of accounts to be prepared depending on the income level of the charity. Charities with a gross income of £100,000 or over and all charitable companies will be required to produce fully accrued accounts comprising of a statement of financial activities, a balance sheet, a cash flow statement, notes to the accounts and an annual report. Those charities with a gross income under £100,000 will be able to produce simplified accounts on a receipts and payments basis. These will include a receipts and payments account, a statement of balances, notes to the accounts and an annual report. For charities producing fully accrued accounts the regulations apply the methods and principles of the Statement of Recommended Practice for accounting and reporting by charities. (the charities SORP). This was published by the Charity Commission on 4 March 2005 and developed by the SORP Board and represents best accounting practice for charities. Specific provision is made in the regulations for charities producing receipts and payments accounts which takes into account the limited resources of smaller charities but which still provides the necessary transparency for the public.

6. The regulations also provide that charity accounts must either be audited or independently examined, again depending on the level of a charity's income. Charities with a gross income of £500,000 or over must have their accounts audited by someone who is eligible to act as an auditor under the terms of section 25 of the Companies Act 1989 or the Auditor General for Scotland. Charities with a gross income of under £500,000 will be able to have an independent examination instead of an audit.

7. Currently under companies law charitable companies with an income under £250,000 are able to have an accountants report prepared instead of having to have an audit of their accounts. One of the policy issues behind the regulations is to ensure that charitable companies do not have to have two different forms of external scrutiny of their accounts. Therefore these regulations exempt those charitable companies that are exempted from audit by the Companies Act 1985, from the audit or independent examination requirements in these regulations. Longer term, the policy is to raise the audit exemption threshold for charitable companies to £500,000 which will align with the audit threshold for non-incorporated charities. However because the Companies Act 1985 will refer to the current £250,000 threshold for a charity to have an accountant's report instead of an audit until the Charities Bill is passed by the Westminster Parliament it is considered that altering the threshold at this stage would be confusing to charitable companies. The regulations therefore do not include an increase in the audit exemption threshold for charitable companies. Once the changes are made to the Companies Act by the Charities Bill further regulations will be considered with a view to increasing the threshold, thus aligning it with the amended provision in the Companies Act 1985.

8. Currently certain charities are exempted from the accounting regulations. These new regulations will apply to all charities entered into the Scottish Charity Register. Transitional provisions have been put in place in the Charities and Trustee Investment (Scotland) Act 2005 (Commencement No 3, Transitional and Savings Provision) Order 2006 to ensure that the current provisions including any exemptions remain in place until the new regulations apply to all charities.

9. To ensure that the burden placed on charities is minimal, the regulations attempt to provide as much alignment with other relevant legislation as possible. In addition, the provisions in the Company Law Reform Bill have been drafted to make it clear that the income level below which a Scottish charitable company may have an accountants report instead of an audit is to be set in these regulations, making the requirements for all types of charities much clearer.

10. The regulations include a provision which allows Registered Social Landlords and Further and Higher Education bodies that are charities to produce statements of account which follow their own industry Statements of Recommended Practice. It would be overly burdensome to require these bodies to produce a different, additional set of accounts to comply with the charity accounting requirements.

Consultation

11. The proposals for the accounting regulations were the subject of a consultation exercise from 11 April until 4 July 2005. The consultation involved 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.

12. In addition the regulations have been drafted in consultation with the Office of the Scottish Charity Regulator and the Executive has been in discussion with the DTI and Home Office to ensure parity in the regulations.

Financial Effects

13. The regulations are deregulatory as a number of charities will now be able to have an independent examination instead of an audit and will be able to produce receipts and payment accounts instead of fully accrued accounts. There will be some training expenses as charities familiarise themselves with the new requirements. A Regulatory Impact Assessment has been prepared and published. It is available at http://www.scotland.gov.uk/Topics/Business-Industry/support/15242/1462

Scottish Executive Development Department
25 April 2006

CHARITIES ACCOUNTS (SCOTLAND) REGULATIONS 2006 SSI/2006/218
FINAL REGULATORY IMPACT ASSESSMENT

Introduction

This Regulatory Impact Assessment aims to provide information on the options considered in relation to the accounts regulations for charities operating in Scotland, and their likely impact on the charitable 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.

Purpose and intended effect of regulation

(i) The objective

The Scottish Executive is committed to reform the regulatory regime for charities in order to support the charities sector and to safeguard the public interest in relation to charities. The Charities and Trustee (Scotland) Act has recently received Royal Assent.

This RIA provides background information on the options which were considered to develop the proposals, and the probable impact and cost of these options.

Devolution: The regulations will only apply to charities on the Scottish Charities Register.

(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.

Section 44 of the Act confers powers on Ministers to make regulations setting out the detailed accounting requirements for all charities registered with OSCR. The current regulations are made under sections 4 and 5 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 and will fall when the Act comes into force and these sections of the 1990 Act are repealed. The new Act provides us with the opportunity to update the accounting requirements for charities to meet current accounting standards and best practice, while relieving the burden on smaller charities by increasing the thresholds at which fully accrued accounts must be produced and at which a charity must have their accounts audited.

In 2004 the Charity Commission reviewed the Statement of Recommended Practice: Accounting and Reporting by Charities (the charities SORP) in line with the Accounting Standards Board (ASB) code of practice and an updated version was published in 2005. The proposals for the new regulations follow the 2005 charities SORP to ensure that recommended best practice and the law are compatible. The principles adopted in the SORP of improved transparency and accountability are consistent with those of the Act and it is therefore felt to be appropriate for the regulations to rely on the charities SORP for accruals based accounts. The regulations seek to deliver a system that is fit for purpose and protects the public interest without being over burdensome or more costly than necessary.

(iii) Rationale for government intervention

The regulations provide the detailed requirements for charity accounts produced under the new Act. Producing new regulations allows us to deregulate and lighten the burden on smaller charities by increasing the thresholds for the type of accounts produced and the type of external examination of their accounts they are required to have. In addition, introducing the regulations allows us to take account of the updates to the Statement of Recommended Practice (SORP) and reduce confusion by ensuring that the statutory requirements and recommended practice are not in conflict.

(iv) Risk assessment

The new regulations are an essential part of the implementation of the Act. Without the new regulations, the accounts provisions of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 and Charity Accounts (Scotland) Regulations 1992 cannot be repealed.

These regulations do not take account of the new charities SORP and do not meet current accounting practice. The inconsistency between the regulations and the SORP would increase the possibility for confusion and encourage the development of inconsistent approaches. This would severely hamper the attempts to provide a transparent and straightforward regulatory framework for charities in Scotland and undermine the principles of the Charities and Trustee Investment (Scotland) Act. The opportunity to reduce the regulatory burden on smaller charities would also be lost.

Consultation

The Charities and Trustee Investment (Scotland) Act was developed following extensive consultation. This RIA and the regulations have been drafted after full consultation on the initial proposals and taking into consideration the responses to those proposals. The consultation involved a range of key stakeholders, including national and local voluntary sector intermediary organisations, representative bodies of particular groups of charities, professional bodies, local authorities, and all those organisations and individuals that have responded to previous Executive consultations on charity law reform.

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 was carried out between 11 April and 4 July 2005. The responses and a summary were published on the Executive website. They are available at
http://www.scotland.gov.uk/Publications/2005/08/01104424/44256 and
http://www.scotland.gov.uk/Publications/2005/10/21155850/58508
The summary of responses includes an outline of the changes we intended to make following the consultation, the majority of which have been included in the regulations laid before Parliament.

Options

Option 1: Do nothing

This is not a viable option if the accounting sections in the Charities and Trustee Investment (Scotland) Act are commenced as the current regulations will fall. This would either leave no detailed accounting requirements for charities in Scotland, seriously undermining the principles of clarity and transparency which underpins the Charities and Trustee Investment (Scotland) Act or the current regulations would have to be retained and the opportunity to de-regulate would be lost.

Option 2: Require accounts produced on an accruals basis to follow the SORP and make specific provision for receipts and payments accounts.

By relying on the SORP charities will be able to meet changing accounting practices in line with the SORP without being forced to meet conflicting statutory obligations. This option would allow for the adoption of the updated accounting practices and the increase in the accounts and audit thresholds.

Option 3: Set out clear requirements in regulations which refer to the methods and principles in the SORP and make specific provision for receipts and payments accounts.

This option will ensure the regulations meet Scottish needs and meet current accepted accounting practice, reducing the possibility of conflicting requirements. It could however lead to confusion if the wording of the regulations and the SORP was not precisely in line and would require charities to ensure that the provisions of the SORP and the regulations continue to align. This option would allow for the adoption of the updated accounting practices and the increase in the accounts and audit thresholds.

Option 4: Implement regulations which re-state the requirements in the charities SORP and make specific provision for receipts and payments accounts.

This option would allow for the adoption of current accounting practices and ensure that the thresholds could be easily altered if necessary. It would however mean that the regulations lose the flexibility of adapting to changing accounting practices by referring to the SORP.

Costs and benefits

Business sectors affected

All charities operating in Scotland will be subject to the new Act and will have to produce accounts under the terms of the regulations.

Benefits

Option 1: *Do Nothing*

There are no benefits to this option. There would either be no clear regulations for charity accounts or the current regime would have to remain in place. If the current regime was repealed it would cause confusion among charities as to what was required to comply with the provisions in the Charities and Trustee Investment (Scotland) Act and would not provide clarity for the general public. If the current regime remains in place the statutory requirements would be in conflict with recommended practice and there would be no de-regulation for smaller charities.

Option 2: Require accounts produced on an accruals basis to follow the SORP and make specific provision for receipts and payments accounts.

This option would allow for the adoption of the updated accounting practices and allow the flexibility to adapt to changing practices as included in future SORPs. The regulations would need to be updated to ensure that they refer to the right SORP when a new one is issued, but changes to the requirements of the regulations would only rarely be needed.

Option 3: Set out clear requirements in regulations but refer to the methods and principles in the SORP and make specific provision for receipts and payments accounts.

This option will ensure the regulations meet current accepted accounting practice. It will allow some flexibility to adapt to changes in the SORP but the regulations would need to be updated to ensure that they refer to the right SORP when a new one is issued and to take account of any changes to the SORP that conflict with the regulations.

Option 4: Implement regulations which re-state the requirements in the charities SORP and make specific provision for receipts and payments accounts.

This option would allow for the adoption of current accounting practices but would mean that the regulations lose the flexibility of adapting to changing accounting practices by referring to the SORP. It would also increase the risk of unintentional anomalies between the regulations and the SORP leading to an increased risk of uncertainty over charities responsibilities.

Costs

Option 1: Do nothing

While there are no direct costs related to this option, it would remove the possibility of increasing the thresholds for audit and the type of accounts produced.

The breakdown of the sector's income provided in the table below shows that 33% of charities in Scotland are currently expected to produce fully accrued accounts because they have an income over £25,000. Increasing the threshold to £100,000 will reduce this to 15% of Scottish charities allowing the vast majority of charities to produce simplified accounts on a receipts and payments basis. All charitable companies will have to produce fully accrued accounts to comply with company law.

Raising the audit threshold from £100,000 to £500,000 would allow a further 10% of the sector to have an independent examination instead of an audit. Both these increases in the thresholds are significantly deregulatory for charities operating in Scotland. These thresholds also align with those to be set in England and Wales by the Charities Bill, and make reporting to OSCR much easier for cross-border charities.

Income	%	Approx number of charities
£500,000 and above	4.9	955
£250,000 to £499,999	2.7	523
£100,000 to £249,999	7.4	1,436
£25,000 to £99,999	18.4	3,598
Up to £24,999	66.6	12,994

Producing fully accrued accounts is a technical process and most charities doing so are likely to use an accountant. In addition the work required of an independent examiner is significantly less than an auditor. Increasing the thresholds is therefore likely to reduce the cost of producing accounts to charities who are now able to produce receipts and payments accounts and/or have an independent examination. Not introducing these regulations would remove that possibility.

Option 2: Require accounts produced on an accruals basis to follow the SORP and make specific provision for receipts and payments accounts.

This option would allow for the changes to the thresholds to be made and therefore could reduce the cost of producing the accounts for a number of charities. There will be additional training costs for charities when the regulations are brought in. We estimate that a half day training course will cost around £125 and that charities will need to allow staff responsible for producing the accounts at least 1 days study time.

Option 3: Set out clear requirements in regulations which refer to the methods and principles in the SORP and make specific provision for receipts and payments accounts.

This option would allow for the changes to the thresholds to be made and therefore could reduce the cost of producing the accounts for a number of charities. There will be additional training costs for charities when the regulations are brought in. We estimate that a half day training course will cost around £125 and that charities will need to allow staff responsible for producing the accounts at least 1 days study time.

Option 4: Implement regulations which re-state the requirements in the charities SORP and make specific provision for receipts and payments accounts.

This option would allow for the changes to the thresholds to be made and therefore could reduce the cost of producing the accounts for a number of charities. There will be additional training costs for charities when the regulations are brought in. We estimate that a half day training course will cost around £125 and that charities will need to allow staff responsible for producing the accounts at least 1 days study time.

Consultation with small business

The regulations only apply to charities operating in Scotland. They do not apply to commercial businesses and so it is not anticipated that they will have any impact on small businesses.

Test run of business forms

There are no statutory business forms introduced by these rules.

Competition Assessment

The Charities Accounts (Scotland) Regulations 2006 are not expected to have any impact on competition as they do not disadvantage charities compared to the current regulatory framework, or each other. They are in fact de-regulatory and will allow more charities to take advantage of the lighter touch regulation provided for small charities.

Enforcement, sanctions and monitoring

The provisions will be enforced by the Office of the Scottish Charity Regulator (OSCR).

The Charities and Trustee Investment (Scotland) Act 2005 provides that if a charity fails to provide OSCR with a copy of it's accounts then OSCR may appoint a suitably qualified person to produce the accounts at the expense of the charity. This will be a last resort and OSCR will first issue warning letters before taking such action they could also launch an inquiry into the charity under the supervisory powers in section 28 of the Act.

Implementation and delivery plan

The regulations will be laid before the Scottish Parliament on XX March 2006 and will come into force on xx April 2006. They will apply to all charities for accounts produced for the financial year starting on or after 1 April 2006.

Post-implementation review

Over the next year or so there will be a number of related changes to the regulatory regime through the Charities Bill in England and Wales and the Company Law Reform. The Executive is working closely with both Bill teams to ensure that the impact of the changes made by these Bills are fully understood and that any changes that need to be made to the regulations to achieve the aim of greater parity are made.

As well as the legislative changes the charities SORP will continue to be reviewed and updated. In future OSCR and the Charity Commission will issue the charities SORP jointly and the Executive will continue to liaise with OSCR to ensure that any changes that need to be made to the regulations as a result of the charities SORP are carried out.

OSCR will also be tasked with reviewing implementation of the legislation and regulations, and advising the Executive of any need for change.

In addition the Executive will review the impact of the regulations within ten years of it coming into force.

Summary and recommendations

Based on the analysis outlined above and the analysis of the responses to the consultation the Executive recommends the adoption of option 2. The regulations have been drafted on this basis to allow the maximum flexibility for the regulations to adapt to changes to the SORP and allow new thresholds to be set for audit and the type of accounts produced.

Declaration and Publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the Responsible Minister ………………………….
Malcolm Chisholm

Date ………………………..

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