

Our Ref: WJ/JD

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19 August 2004

Dear Ms Watson

Draft Charities and Trustee Investments (Scotland) Bill – Response to the invitation to comment

Gerrard Ltd is a leading UK investment manager with a substantial presence in Scotland, having offices in Glasgow, Edinburgh and Aberdeen. In addition, Gerrard is one of the leading UK managers of charity investments, particularly for smaller and medium sized entities, and we provide investment management services for a good many Scottish charities and not-for-profit organisations. A number of our senior investment managers in Scotland have made the management of charity investments a particular specialisation and through them we have a profound interest in the future success of the draft Charities Bill published by the Scottish Executive. We welcome the review of regulation governing charitable bodies in Scotland and we are heartened by the broad scope and direction of the draft Bill.

We do wish to make some observations on trustees' powers of investment (sections 73-75). These comments are informed by our experience of managing investments for charitable bodies and by the greater flexibility, which legislation in England and Wales has provided, bringing advantages to trustees in the fulfilment of their custodial obligations.

Section 73 of the Bill makes provision for the amendment of the Trusts (Scotland) Act 1921 and the Trustee Investments Act 1961. By amending rather than repealing these acts, we believe an opportunity is missed to simplify the legal framework for lay trustees who would be better served by a comprehensive single Act determining their obligations and the scope of their powers. The draft Bill provides a perfect opportunity to achieve this objective. If repeal is impractical we would urge that the Bill explicitly empowers trustees to delegate the power of investment (as determined in Section 74 of the Bill) to an appointed investment manager, under full discretionary powers. It is our experience that the opportunity to improve investment performance increases under discretionary investment management arrangements where the professional investment manager is not limited in the timely execution of transactions by the need to obtain prior approval. A further extension of this argument applies to use of nominee companies, which can reduce the cost of maintaining an investment portfolio. We would recommend transparency in the new Bill granting trustees the opportunity to avail themselves of such facilities.

Section 74 of the draft Bill requires trustees, to 'obtain and consider proper advice' in the exercise of their power of investment. This is a confirmation of the responsibilities of custodians of charity assets with which we are sympathetic

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2

19 August 2004

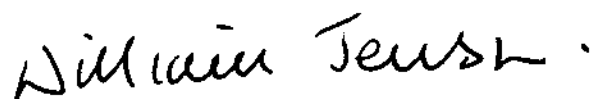
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We anticipate that proposed legislation changes in England and Wales, when enacted, would allow Scottish charities to investment in Common Investment Funds. This, we believe, will be of benefit to smaller charitable bodies struggling with disproportionate costs in the management of their assets. We would like to think that Scottish legislation would include the opportunity to create and manage such funds in Scotland.

We are enthusiastic for the progress of this draft Bill to enactment and we hope that our observations will be of value as the detail of legislation is considered.

With kind regards

Yours sincerely



William Jensen
Head of Charities