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25 August 2004

**By Email and Post: [charitybill@scotland.gsi.gov.uk](mailto:charitybill@scotland.gsi.gov.uk)**

Dear Madam

### **Draft Charities and Trustee Investment (Scotland) Bill**

Bates, Wells & Braithwaite is one of the leading firms advising charity and voluntary sector clients in England. Stephen Lloyd, the head of our charity and social enterprise department, is currently the chair of the Charity Law Association in England and Wales. We represent a number of large national charities, including several that carry out operations north of the border.

We have very grave concerns about the obligation, described in the consultation paper accompanying the draft Bill, on "charities operating in Scotland" to register with the OCSR. Scottish charities operating in England do not have to register with the English Charity Commission. Equally, English companies operating in Scotland do not have to register with the Scottish Company Register and vice versa. Nor is there any such dual registration in Northern Ireland.

This is a particular concern since there is no limitation, on the face of the Bill, of the powers of the OCSR to the Scottish assets of charities registered with it.

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As drafted, English charities “operating in Scotland” would be subject to the very onerous requirements of dual regulation, including:-

- Registration with the OSCR;
- Obtaining the consent of the OSCR to any change of name;
- The power of the OSCR to require a charity registered with it to change its name;
- The requirement to abide by regulations about publicising charitable status on notepaper;
- The requirement under clause 13 of the Bill to obtain the prior consent of the OSCR to certain activities including a merger;
- The requirement to give notice of key changes to the OSCR;
- The power for the OSCR to obtain documents and information;
- The obligation to provide a constitution and latest statement of account under clause 19 of the Bill;
- The launching of enquiries by the OSCR.

In conclusion, the practical implications of dual regulation could result in English charities operating in Scotland being subject to unnecessary costs and expenses. This cuts across the desire of the UK government to ensure that charities operate in a cost effective manner without excessive centralised costs.

We understand that, although there is no reference in the wording of the draft Bill to “charities operating in Scotland” it is envisaged that clause 12(1) of the Bill, allowing charities registered with the OSCR to refer to themselves as “charities registered in Scotland” will have the effect of requiring charities operating in Scotland to register. We believe that this needs clarification. In particular, if an English charity which carries out activities in Scotland chose not to register, it should be clear that it would suffer no adverse tax consequences as a result of this decision. Could such a charity describe itself in Scotland as a “charity registered in England and Wales”?

We would be more than happy to outline our concerns in more detail if you wish.

Yours faithfully

**Bates, Wells & Braithwaite**