MEMORANDUM
COMPANIES (AUDIT, INVESTIGATIONS AND COMMUNITY ENTERPRISE) BILL

Purpose

1. The Bill will create a new form of company – the community interest company (CIC). There is a possibility that some charities may wish to convert to CICs. Part of the process to allow this conversion to happen will be to empower an organisation to authorise such a conversion. This legislation will bestow this power on the Charities Commissioners for England and Wales. For the same power to be given to the Scottish Charity Regulator in respect of Scottish charities, the consent of the Scottish Parliament is required.

Background

2. The concept of the community interest company (CIC) was originally outlined in the Cabinet Office Strategy Unit report "Private Action, Public Benefit", published in September 2002.

3. Following a positive response, on 26 March 2003 the UK government launched its proposals for a new legal structure for social enterprises to run alongside and, if appropriate, provide an alternative to Trusts, Companies Limited by Guarantee, Industrial and Provident Societies etc. The new legal structure will be called the *community interest company*.

4. Some of the legal forms which social enterprises use were designed centuries ago for completely different types of organisation. Through proposing the creation of a new company structure, the UK Government wants to support the sector by creating a modern and appropriate legal vehicle and to help raise their profile.

5. A CIC will therefore be a new type of company, designed for social enterprises who want to use their profits and assets for the public good. CICs will be easy to set up, with all the flexibility and certainty of the company form, but with some special features to ensure they are working for the benefit of the community.

6. CICs will not be able to enjoy the benefits or burdens of charitable legal status, even if their purposes are wholly charitable. This will help to reduce the risk of public confusion, and will avoid the problem of overlap between the statutory requirements of charitable and CIC status. Charities will, however, be able to own CICs (e.g. as trading vehicles). It is intended that CICs should be able to convert to charitable status. It will also be possible for a charity to convert to a CIC, although demand for the latter option is expected to be very limited since CICs will not enjoy charitable tax status.

7. However, some charities may wish to convert to CICs. At present Scottish charities are effectively prevented from changing status by Section 14 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 as it prevents them from changing their purposes to any which are not eligible for charitable status. Future Scottish legislation could amend this legislation to enable charities to abandon their charitable status, with the consent of the new Scottish Charities Regulator, where they intend to convert to CICs.

8. As the Executive is planning charities legislation of its own, it is sensible to amend all legislation relating to Scottish charities at this time. Therefore, the provisions below are prospective and will in practice have no real effect unless and until Section 14 of the 1990 Act is amended. At this point secondary legislation in Westminster will permit the authorisation of conversions in Scotland.

Content of the Bill

9. The relevant provisions are contained in Part 2, Section 37 of the Bill.

Section 37 (1 and 2): Current situation

10. These acknowledge that a Scottish charitable company may not become a CIC and that the Inland Revenue may apply to the Court of Session for the quashing of the new incorporation where a Scottish charity has become a CIC without authorisation.

Section 37 (3): Future regulations

11. This provides that future regulations made by the Secretary of State (which she will make to co-ordinate with the potential new Scottish legislation referred to in paragraph 7 above) may repeal subsections (1) and (2) above. Once this is passed the following provisions of the Companies Bill will come into force.

Section 37 (4): Authorisation to convert from a charity to a CIC

12. This empowers the Scottish Charity Regulator to authorise conversions from Scottish charities to CICs. In the case where a converting Scottish charity's registered office is in England and Wales authorisation from both the Charities Commissioners and the Scottish Charity Regulator will be required.

Section 37 (5&6): Amendment of the CIC register

13. These give the Scottish Charity Regulator the power to apply to the Court of Session for the quashing of the new incorporation where a Scottish charity has become a CIC without authorisation.

Section 37 (7): Charitable lock on assets

14. Ensures that the existing assets of charities converting to CICs are used for the original charitable purposes of that organisation.

Financial effects

15. Negligible .

Conclusion

16. If Scottish charities are to have the opportunity to be able to convert to CICs, the Bill requires the conferral of a reserved function (authorisation to convert from a charity to a CIC) onto a devolved body (the Scottish Charity Regulator).