



Consultation on Scottish Charity Law

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Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

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Yes

No

Scottish Charity Law Consultation

Collated responses from EVOC's consultation event held on 6th March, 2019

Summary of event:

EVOC held an event for third sector organisations and other stakeholders interested in charity law and regulation in Edinburgh. Representatives from OSCR and Scottish Government's Third Sector team were invited to give an overview of the purposes of the consultation and to answer questions and provide any further clarification.

The intention of the event was to garner views from a cross section of different sized and focus charities to help form a sample response to the consultation. For the purposes of this consultation it was decided that the event and its discussions would focus on six of the ten consultation questions due to their relevance to charities and their trustees. Participants were encouraged to complete the full consultation and further general feedback.

EVOC is submitting its own response to the consultation and those views are not included in this response.

Section 1: Publishing annual reports and accounts in full for all charities on the Scottish Charity Register

The attendees agreed that accounts and annual reports should be published and did not feel it was necessary to redact the annual report apart from signatures and personal addresses. It was felt that the time and resource being spent on this is wasteful and were supportive of a way of publishing reports which meant that OSCR doesn't have to redact information.

Some noted that OSCR could do more to link with Companies House so the public can view reports for charities which are also companies there.

Further questions and points raised including:

Independent examiners names/details should not be exempt from redaction, it was felt that it was important for public trust to know who is examining a charities accounts.

There was concerns over capacity to ensure trustees are able to comply with their responsibilities and an increase in administrative burdens.

Section 2: An internal database and external register of charity trustees

The feedback from our workshop was supportive of the idea of an internal register. Whilst there were several comments that were also supportive of the register being public, people were somewhat wary about this. Attendees noted that an external register would increase transparency but also expressed concern about how the information could be used and several group discussions noted that it should be possible to request exemption from being on the public register.

There was less discussion about publishing the names of trustees who have been

disqualified, but those that did comment on this expressed similar thoughts to the external register generally. There is the benefit of the transparency, but there were questions about how much information would be shared about the reason for the disqualification and how long that information would be publicly available.

There was some concerns that information (if held externally) could make trustees a target for fundraiser communication.

Section 3: Criteria for automatic disqualification of charity trustees and individuals employed in senior management positions in charities

The feedback at the event was generally supportive of this proposal but noted some practical concerns. In very small charities there isn't always a clear senior management role, so OSCR would need to define who they consider a senior manager.

There may also be cases where an exemption might be reasonable – examples given were organisations working with offenders who may become trustees or take on roles within the organisation.

Disqualification due to bankruptcy not always an indication of character (can often be due to the negligence of others)

There was also recognition that the continuing focus on trustees distracts from the greater issue and problems that charities face due to founders/CEO's holding boards to ransom.

Further concerns regarding this (and other proposed changes) affecting future trustee recruitment and individuals willing to stand as a trustee.

Section 4: A power to issue positive directions to charities

This was a welcomed recommendation (and one that many thought already existed as a power) it was felt it would be able to tackle problems with support rather than discipline.

There would need to be clarity on whether directions must be followed and whether there would be action taken if not implemented.

There was a recognition that there is still a lack of knowledge regarding trustees duties and that this needs to be taken into account and resourced appropriately.

On whether directions should be specified, it was felt that there would be attempts to look for loopholes so it was encouraged that it should be kept within OSCR's discretion.

Section 5: Removal of charities from the Scottish Charity Register that are persistently failing to submit annual reports and accounts and may no longer exist

Discussions supported the proposed power to remove charities that failed to submit accounts however more information regarding an enforcement framework would be required.

Clarification of 'persistent' failure would be necessary, for example; two consecutive years of failing to submit?

There was discussion around providing (or signposting) the appropriate levels of support for charities that were potentially faced with this action.

Questions were raised regarding the process for removal and that there was a clear and well publicised process to check circumstances for removal.

Clear and well publicised process for handling any charitable assets post-removal, also required detailing.

Section 8: De-registered charities' assets and public benefit

This proposal was supported (again, surprise that this was not already the case), there was some suggestion that any recouped assets should be nationalised and put towards the running costs of OSCR.

There would need to be a direction to encourage all forms of charities to have appropriate dissolution clauses in their governing document and to ensure that public benefit must form part of the transfer or continued use of assets following de-registration.

General Comments:

From the participants that attended it was felt that a consultation on Scottish charity law and regulation of Scottish charities was long overdue but were welcoming of the opportunity.

There was a consensus of feeling that OSCR were currently not adequately resourced and empowered to tackle the problems that charity regulation exposes for charities and that the governing and regulatory issues that are currently being faced, are experienced by all size and forms of Scottish charities.

There was some comment regarding the lack of omission of consulting on the 'Charity Test' and its importance and relevance to the trust and integrity of charities.

Although these proposals are universally supported, there is concern that there is still much to be done to ensure existing trustees understand and fulfil their current general and specific duties.

END.