

Response ID ANON-ZJF2-PH9J-Q

Submitted to **Consultation on Scottish Charity Law**

Submitted on **2019-03-18 15:42:32**

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

1 On the Scottish Charity Register, should OSCR be able to publish charity annual reports and accounts in full for all charities?

Yes

Please explain your answer including any potential benefits/risks.:

This supports the goal of increased transparency and brings the regulator in line with other comparable regulators around the world.

2 Do you think there is any information in charity annual reports and accounts that should not be published on the Scottish Charity Register?

No

Please say what information you think should not be published.:

Transparency has to be complete, not partial

3 Do you think charities should be allowed to apply for a dispensation (exemption) from having their annual reports and accounts published in full on the Scottish Charity Register?

Yes

Please explain your answer (e.g. in what circumstances do you think a dispensation (exemption) should be allowed? Why you think a dispensation (exemption) should not be allowed?):

Whilst for transparency purposes it would be difficult to draft broad guidelines that would justify OSCR exercising a power in favour of dispensation, there should be limited provision for dispensation where there is a demonstrable risk of personal danger.

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

4 Should OSCR be able to collect the trustee information noted above for use in an internal database?

Yes

5 Should the names of trustees be published on the external public register?

Yes

6 Should the names of trustees who have been removed following an inquiry by OSCR, be published on the external public register?

Yes

7 Do you think trustees should be allowed to apply for a dispensation (exemption) from having their name published on the external public register?

Yes

Please explain answer (e.g. in what circumstances do you think a dispensation (exemption) should be allowed? Why you think a dispensation (exemption) should not be allowed?):

In situations where trustees can demonstrate risk of personal danger – in line with the practice of the Charity Commission in England and Wales, effective from 1st April 2019.

If you wish to explain any of your responses to the questions in Section 2, please do so. (e.g. setting out what information you think should be / should not be included on an internal database and external public register, and what you see as the benefits and risks of each proposal)

If you wish to explain any of your responses to the questions in Section 2, please do so in the box below. (e.g. setting out what information you think should be / should not be included on an internal database and external public register, and what you see as the benefits and risks of each proposal):

In line with the value of a diverse sector that reflects the broader demographics of society, we would propose that OSCR collect additional demographic data about charity trustees which could, in a suitably anonymised fashion, be used in future research. This for example, could assist with the aim of tracking progress toward diversifying trustee boards.

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

8 Should the criteria for disqualification and removal of charity trustees be extended to match the criteria in England and Wales?

Yes

9 Should the criteria for disqualification and removal also be extended to those in certain senior management positions?

Yes

If you wish to explain your responses to any of the questions in Section 3, please do so. (e.g. why you think yes, why you think no, what criteria for disqualification and removal should / should not be included, are there additional criteria you think should be included):

If you wish to explain your responses to any of the questions in Section 3, please do so in the box below. (e.g. why you think yes, why you think no, what criteria for disqualification and removal should / should not be included, are there additional criteria you think should be included)::

Whether or not we agree with the fine detail of the extended disqualification criteria that now apply in England and Wales, we think it is important, in line with equality and transparency, that consistent rules apply across the border.

Section 4: A power to issue positive directions to charities

10 Should OSCR be given a power to issue positive directions?

Yes

11 If you answered Yes to question 10, should a power to issue positive directions be wide ranging or a specific power?

Wide ranging

12 If a charity failed to comply with a positive direction that OSCR had issued, should this be classed as trustee misconduct?

Yes

If you wish to explain your responses to any of the questions in Section 4, please do so. (e.g. why you think yes, why you think no, why you think a positive direction should be wide ranging or a specific power, what should a specific power include?)

If you wish to explain your responses to any of the questions in Section 4, please do so in the box below (e.g. why you think yes, why you think no, why you think a positive direction should be wide ranging or a specific power, what should a specific power include?):

Wide ranging powers are more likely to be useful. The problem with specific powers is that OSCR may find itself unable to intervene in unforeseen situations, which could bring the regulator and the sector into disrepute.

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

13 Should OSCR be able to remove charities from the Scottish Charity Register if they have persistently failed to submit annual reports and accounts?

Yes

14 Should OSCR be given a positive power of direction to direct a charity to prepare annual reports and accounts?

Yes

15 If a charity failed to comply with a positive direction to prepare annual reports and accounts, do you think this should be classed as trustee misconduct?

Yes

If you wish to explain your responses to any of the questions in Section 5, please do so. (e.g. why you think yes and why you think no to the questions and what you see as the benefits and risks of each proposal)

If you wish to explain your responses to any of the questions in Section 5, please do so in the box below (e.g. why you think yes and why you think no to the questions and what you see as the benefits and risks of each proposal)::

Our answer to question 13 is subject to qualification. There needs to be a clear definition, communicated to the sector, of what 'persistently' means. The exercise of the power should also be subject to a clearly laid out appealable process.

Section 6: All charities in the Scottish Charity Register to have and retain a connection in Scotland

17 Should all charities registered in Scotland be required to have and retain a connection with Scotland?

Yes

Please explain your answer.:

We are aware of the concern around the abuse of shell companies and understand that this can be extended to 'charities' operating for nefarious purposes, such as terrorist financing. We think that a clear definition needs to be supplied for what constitutes 'a connection with Scotland'.

Section 7: Inquiries into the former charity trustees of bodies which have ceased to exist and bodies which are no longer charities

18 Should OSCR be able to make inquiries into former trustees of a body which is no longer a charity, a charity which has ceased to exist and individuals who were in management and control of a body which is no longer controlled by a charity?

No

Please explain your answer.:

This feels like a solution to a particular problem, which could be resolved by other means. It is difficult to provide appropriate limits on the operation of the power such that OSCR would not be perceived to be abusing the power by overreaching its limit in relation to the regulation of charities.

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

19 Should bodies that have de-registered as charities be required to continue to use the assets held at the time of removal from the Scottish Charity Register to provide public benefit?

Yes

Please explain your answer.:

This enhances trust and confidence in the sector by preserving charitable assets for charitable purposes in the public benefit.

Section 9: The speed and efficiency of OSCR's powers to gather information when making inquiries

20 Should OSCR be given the power to give the required notice of a request for information to a body or individual that is misrepresenting themselves as a charity, that is no longer charity, and to former trustees of a charity which has ceased to exist?

Yes

Please explain your answer.:

Yes – this demonstrates that the regulator can be seen to be an effective regulator and to preserve charitable assets.

21 Should it be clarified that the notice periods to charities that are subject to a request for information can overlap?

Yes

Please explain your answer. :

The regulator must be seen to be acting efficiently and within a timely period.

Section 10: The reorganisation of charities established under royal charter, warrant or enactment

22 Should the legislation be clarified to make clear whether OSCR can approve reorganisation schemes for certain charities that have been established by royal charter, warrant or enactment?

Yes

Please explain your answer.:

Charitable funds should not be used to resolve this issue. It is not an appropriate use of charitable resources to resolve these kinds of issues, where legislation could clarify the matter.

About you

What is your name?

Name:

Professor Warren Barr

What is your email address?

Email:

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Charity Law and Policy Unit, School of Law and Social Justice, University of Liverpool

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

Publish response only (without name)

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Very satisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Very satisfied

Please enter comments here.: