

Submitted to Consultation on Scottish Charity Law
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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.:

We believe that openness and accountability are essential in terms of building trust and confidence in registered charities, including charities that are social enterprises.

Published information should be written in clear language so that members of the public can understand reports.

Specifically plain language summaries of charity accounts, the context and any OSCR decisions should always be published alongside full reports.

2 Do you think there is any information in charity annual reports and accounts that should not be published on the Scottish Charity Register?

Yes

Please say what information you think should not be published.:

As already mentioned in this consultation document the removal of signatures, that could result in e.g. fraudulent activity such as identity theft, has been taken into consideration.

The publication of trustee names and photographs is welcome.

However, if there is additional information that could place e.g. personal safety at risk then this should not be included (see Question 3).

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?):

Full publication of annual reports and accounts, with plain language summaries, should be the default requirement.

However, certain charities see merit in e.g. ex-offenders or victims of crime playing a key role in their governance.

Therefore exemptions should be allowed to protect privacy and restrict public publication of trustee names in certain limited circumstances, judged on a case-by-case basis.

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?):

As mentioned in Section 1 exemptions may apply in certain limited circumstances.

A clear, fair process and a right of appeal for individual trustees must also be put in place.

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):

The benefits of public accountability, helping build trust in charities, generally outweigh any perceived risks.

Scotland should be leading the way and not have a poorer level of transparency compared to other parts of the UK.

Any internal data held by OSCR must be carefully monitored to ensure retention of only a basic and proportionate level of information about trustees.

The publication of the names of those who have been excluded as charity trustees will assist charitable organisations in recruiting suitable candidates.

It will also ensure that charities attract only those individuals who are happy to be held accountable.

Publication may also discourage the types of behaviour that may result in exclusion as a charity trustee.

The process of providing trustee details must also ensure minimal administration for charities and simply form part of their standard OSCR reporting procedures.

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):

It would be important to define exactly what is meant by "certain senior management positions."

Again there may be exceptions in limited circumstances e.g. the skills of ex-offenders being utilised as charity trustees.

Provisions should also be made regarding trustees or senior managers who are currently in post, who may fall under one of these new categories, including establishing clear and open criteria for waivers.

These types of situations would impact directly on the functioning of the charity and this must be taken into consideration. The independence of the charity must also be maintained.

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?

A specific power

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?):

The role of charities as independent organisations must be protected.

Any granting of such powers to OSCR must be specific, clearly regulated and used proportionately. A right of appeal should be independent of OSCR.

The role of OSCR should be to remain as a helpful facilitator to empower and assist charities and not become simply an enforcement agency.

There should certainly be an obligation on OSCR to publish a full, associated inquiry report in every instance where these powers are used.

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):

A clear and reasonable definition of "persistent" is required.

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.:

Yes but each charity should be judged on a case by case basis. What is the definition of "connection"?

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?

Yes

Please explain your answer.:

This power must be specified and clarified in law, with guarantees to be used proportionately.

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.:

"Public benefit" needs to be clearly defined.

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.:

This proposal would help retain and build upon public trust in charities.

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. :

This proposal could improve the speed of decision making by the regulator.

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.:

We would encourage communication with those charities directly affected by this issue, to ensure that procedures for change are suitable and straightforward.

About you

What is your name?

Name:

Duncan Thorp

What is your email address?

Email:

duncan.thorp@socialenterprise.scot

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Social Enterprise Scotland

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

Publish response with 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?:

Slightly dissatisfied

Please enter comments here.:

Questions too narrow in scope to address complex issues, needs a wider conversation.

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.:

The format is simple and user friendly and allows the user to easily return and continue.