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Social Justice and Social Security Committee

Stage 1 Report on the Charities (Regulation and Administration) (Scotland) Bill



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Social Justice and Social Security Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Social Justice, Housing and Local Government, excluding matters relating to local government, housing and planning.



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Membership changes

1. The following changes to Committee membership occurred during the Committee's scrutiny:
 - On 18 April 2023, Collette Stevenson MSP, Gordon MacDonald MSP and Marie McNair MSP replaced Natalie Don MSP, Emma Roddick MSP and Paul McLennan MSP.
 - On 25 April 2023, Paul O’Kane MSP and Katy Clark MSP replaced Pam Duncan-Glancy MSP and Foysoi Choudhury MSP.

Introduction

2. This Scottish Government Bill ¹ was introduced by the Cabinet Secretary for Social Justice, Housing, and Local Government, Shona Robison MSP (the “Cabinet Secretary”), on 15 November 2022.
3. The Social Justice and Social Security Committee was designated as the lead committee on the Bill.

Overview of the Bill

4. The Scottish Government’s Policy Memorandum ² states that the Bill seeks to strengthen and update the law relating to the regulation and administration of charities and their assets within the current legislative framework, which is provided for in the Charities and Trustee Investment (Scotland) Act 2005 (“2005 Act”).
5. It does so by enhancing the powers of the Office of the Scottish Charity Regulator (“OSCR”) and by bringing Scottish charity legislation largely into line with key aspects of equivalent regulation and administration in England, Wales, and Northern Ireland.
6. The Bill is comprised of twenty sections and one schedule, and—
 - provides for the provision of information about charity trustees (both public information and internal information for OSCR’s use),
 - updates the law in relation to disqualification criteria (expanding the grounds upon which a person is, subject to a possible waiver, disqualified from acting as a charity trustee; extending this to certain senior management functions; and providing for a publicly searchable record of persons who are disqualified by reason of having been removed from office in Scotland),
 - extends the current rules allowing OSCR to appoint interim charity trustees to cases where the charity is not in a position to request OSCR’s assistance,
 - in relation to accounts, provides for these to be publicly available on the Register as well as allowing for the possible removal of charities which fail to submit accounts and then ignore communications from OSCR about that failure,
 - requires the recording of charity mergers in a publicly accessible record and making default provision under which legacies transfer to the successor charity,
 - refines the process in relation to inquiries (allowing inquiries to be held or continue despite a change in a body or person’s status; refining the position as to how notices are served and notice periods apply in relation to inquiries; and giving OSCR the ability to issue positive – as opposed to interdictory – directions following an inquiry),
 - requires charities to have a connection to Scotland which makes their regulation by OSCR appropriate,

- a number of minor or technical changes which do things such as formalise existing practices, close a loophole or otherwise clarify wording in the 2005 Act, align the position for charities of different types, simplify practices, specify deadlines for existing actions, etc.

Evidence

7. The Committee received written evidence on the proposals in the Bill through a call for views ³ and a survey ⁴.
8. We held three evidence sessions on 2 ⁵, 9 ⁶ and 16 ⁷ March and also undertook an informal engagement event ⁸ on the Bill to inform our thinking. A range of individuals from across the third sector as well as those representing accountancy and law firms were involved. Further details on the Stage 1 scrutiny of the Bill can be found on a dedicated page on the Scottish Parliament website ⁹.
9. We thank everyone who contributed their input and expertise which has helped to shape our views on the Bill.

Scrutiny

10. Under the Parliament's Standing Orders Rule 9.6.3(a), it is for the lead committee to report to the Parliament on the general principles of the Bill. In doing so, it must take account of views submitted to it by any other committee. The lead committee is also required to report on the Financial Memorandum ¹⁰ and Policy Memorandum ¹¹, which accompany the Bill.

Finance and Public Administration Committee

11. The Committee received a letter from the Finance and Public Administration Committee drawing our attention to the three submissions it had received in response to its call for views on the Bill's Financial Memorandum.
12. These submissions focused on the resource implications of the proposals in the Bill. The question of resourcing is an issue which we deal with in our report.

Delegated Powers and Law Reform Committee

13. The Delegated Powers and Law Reform (DPLR) Committee considered the Bill at Stage 1 at its meetings on 24 January and 7 February 2023.
14. The DPLR Committee's report states the Bill confers seven powers to make subordinate legislation on the Scottish Ministers. Of these, the DPLR Committee

was content with the delegated powers in the following provisions:

- section 18 (ancillary provision);
 - section 19 (commencement);
 - schedule, paragraph 13 (amendment to power in section 52(1) in respect of Scottish Charitable Incorporated Organisation documents); and
 - schedule, paragraph 14 (amendment to existing powers to make secondary legislation).
15. It sought further information from the Scottish Government on the remaining provisions:
- section 4 (power to modify new section 69A to add or remove an offence);
 - section 5 (power to add or remove persons or descriptions of persons to the list of individuals disqualified from holding office as charity trustee); and
 - section 16(3) (power to modify section 5 to make provision about the factors which are or are not relevant for the purpose of section 5(2)(aa)).
16. Specifically, they were interested in whether it is appropriate to delegate these powers, and further justification as to why they are being taken. In relation to the section 4 power, the Committee also asked whether there are precedents of similar powers being used in primary legislation.
17. We note the DPLR Committee is content with the explanations and additional information received.

Policy Memorandum

18. We do not have any specific points to raise on the contents of the Policy Memorandum.

Approach to the report

19. This report focuses substantially on the detail of the Bill provisions and their implementation.
20. We did, however, receive a significant amount of evidence that highlighted other suggested areas of charity law that could be reviewed in the future or where there are perceived 'gaps' in the 2005 Act more generally. In many cases, respondents accepted that these suggestions could be taken forward as part of the future wider review of charity law the Scottish Government has committed to. We also note the Scottish Government states in its Policy Memorandum that it does not seek to revisit the fundamental principles of the 2005 Act with this Bill.
21. We have set out the evidence gathered on a wider review in Annexe A to help

inform the Scottish Government's next steps. This section includes correspondence the Committee received regarding an issue related to the availability of charity auditors.

Scottish Government's consultation

22. The Scottish Government first consulted on the proposals for the Bill, which closed in 2019, with 307 responses indicating broad support for all proposals. Further proposals were identified following analysis of the consultation responses and discussions with stakeholders. Another consultation was held on revised and new proposals between December 2020 and February 2021 with 100 responses received.¹²
23. Some organisations were disappointed about the level of engagement achieved by the Scottish Government's consultation process on the proposals for the Bill. SCVO stated that, as the Bill's proposals are "perhaps skewed in the regulator's direction", there is not enough information available for the sector regarding how the regulations will be implemented¹³. Others we heard from were satisfied with the process.
24. Both Alzheimer Scotland and Children's Hospices Across Scotland (CHAS) mentioned the impact of the pandemic on the process. Alzheimer Scotland said that, although it had been involved in the 2019 consultation, they were unable to take part in the second one as the organisation had to divert its resources as a result of COVID-19. They felt the overall process had therefore been interrupted and noted other organisations had similarly been unable to participate fully¹⁴. CHAS explained they had not been "particularly aware of or involved", noting that it had taken place during lockdown¹⁵.
25. Volunteer Scotland raised specific concerns about participation. They were "struck by the relatively small number of organisations that were consulted during consultation events and the fact that only 12 TSIs [third sector interfaces] out of a possible 32 were consulted." While overall they were "fairly satisfied" that a selection of voluntary organisations had taken part, they added that further consultation with faith and ethnic minority communities could have been good "given the particular challenges that they might experience as a result of the Bill"¹⁶.
26. The Cabinet Secretary stressed—

” There has been extensive consultation, including with a number of small organisations. The Bill has been the subject of two 12-week consultations and there is a total of, I think, more than 400 written responses from bodies of all sizes, including a number of small organisations¹⁷.

Conclusions and recommendations


27. We acknowledge the concerns of third sector stakeholders about the level of engagement the Scottish Government's consultations achieved. We believe it is unfortunate the second consultation process was interrupted by COVID-19 and that many charitable organisations had to prioritise their work over responding. Nonetheless, we expect the Scottish Government to learn lessons from this

experience and ensure any wider review of charity law focuses on reaching a wider range of stakeholders and supports them to engage. We strongly suggest that the Scottish Government engage the third sector more directly, and early, and that they make specific efforts to reach small to medium organisations.

Information about charity trustees

28. Sections 2 and 3 of the Bill propose changes to the information that OSCR (also referred to as “the regulator”) is required to hold on charity trustees.
29. Section 2 of the Bill requires that OSCR publishes the names of all charity trustees on the public Scottish Charity Register (“the Register”).
30. Section 3 of the Bill requires that OSCR collects and holds details of all trustees on an internal database. This would include names, addresses and contact information.

Inclusion of names of charity trustees on the Scottish Charity Register

31. The majority of witnesses are supportive of the provision to include the names of trustees on the public register to increase transparency and accountability.
32. Witnesses supportive of the publication of trustee names highlighted the benefits to transparency. Several witnesses highlighted that the existence of the dispensation process, and the fact that the public register will contain only names and not addresses, were important factors in their support.
33. Some witnesses, however, considered prospective trustees might be put off taking on the role as a result of trustee names being routinely published. Volunteer Scotland were particularly concerned about potential trustees with lived experience being uncomfortable with this ¹⁸.
34. The Faculty of Advocates also expressed “reservations” about having an entirely public register. They suggested trustees should be able to decide whether or not to make their names public ¹⁹.
35. The Faculty of Advocates’s written evidence cited the position of the Court of Justice of the European Union—
 ...the Court of Justice of the European Union (“CJEU”) has somewhat moved away from the idea that there ought to be publicly accessible registers of the owners of companies and other entities. The CJEU’s shift of position is based on its concerns about a significant likelihood of interference with a person’s right to privacy ²⁰.
36. The Charity Commission for England and Wales advised they include the names of trustees on their public register and it is not something they “have been told is contentious in any way”. ²¹
37. OSCR said, in terms of granting a dispensation from the publication of trustee names on safety or security grounds, they would be looking for a “specific and clear reason why publishing such information would jeopardise the safety and security of individuals or the premises”. They highlighted Women’s Aid and women’s refuges as examples and advised there are approximately 69 charities on the register with

information excluded. They added the charity would be able to exclude the information from its accounts as well ²².

38. The Charity Law and Policy Unit (University of Liverpool) reflected it is “an open question” as to whether or not the dispensation should go further than what is already iterated, but the provision is “not a broad measure that covers the otherwise disadvantaged beyond safety and security concerns”. ²³
39. The Cabinet Secretary explained the dispensation mechanism is already part of the 2005 Act and the Bill simply extends this to “cover the new trustee information on the register.” She advised operation of this by OSCR will be the same as it is now and assessed on a case-by-case basis. The Cabinet Secretary added the Bill will also allow OSCR to exclude information from the register on safety or security grounds if it thinks a person or property could be at risk. It does not have to wait for an organisation’s request to do this. ²⁴
40. The Cabinet Secretary further said OSCR already has a dispensation procedure in place and has experience in assessing requests and working with individuals applying for dispensation. ²⁵
41. She additionally advised the names of trustees are already listed on charity accounts and those accounts are already available to the public via a request to a particular charity (although, at present, the accounts published by OSCR on the register have personal information redacted). The Bill will just put all the information in one place, so it is more easily accessible to the public. ²⁶

Information about charity trustees for OSCR’s use

42. There was some divergence of opinion around how much information OSCR should require organisations to provide.
43. Alzheimer Scotland advocated “OSCR should use only the minimum amount of information necessary to perform its function” ²⁷ —

” “...people who choose to take up the role of trustee in a charitable organisation still have the right to data protection and the right to privacy through existing law. We believe that the publication of names only would be sufficient for public offerings and making the information available to the wider system. Anything beyond that, which would be held in the internal record, should also be kept to a minimum.

We have to understand what information is being gathered, how it will be stored and what mechanisms, if any, there will be to share it within or beyond OSCR. It is really important that we be clear that we are taking on board the absolute minimum information to show that we can still ensure individuals’ privacy and protection.” ²⁸

44. Edinburgh Rape Crisis Centre thought similarly and stated that information “should be limited to names” to protect the safety of potential trustees. ²⁹

Conclusions and recommendations

45. We consider the provisions strike the right balance between ensuring charity regulation is more transparent and protecting trustee anonymity in appropriate circumstances.

Sections 4-7 Disqualification from being a charity trustee

46. Sections 4-7 of the Bill would make amendments to the current law surrounding the disqualification of charity trustees.
47. Proposals in Section 4 of the Bill extend the list of offences for which an individual is disqualified from being a trustee, to include offences such as bribery, acts of terrorism, money laundering and perjury. The list can be modified via secondary legislation.
48. Section 5 would also add some descriptions of situations that would result in disqualification, such as being a designated person under terrorist asset freezing orders. This list can also be modified via secondary legislation.
49. Section 6 of the Bill proposes that these criteria for disqualification be extended to senior management positions in charities, rather than just trustees.
50. Section 7 of the Bill proposes that the names of any individuals disqualified as trustees by the Court of Session would be held on a public record which is searchable by reference to a specific name.
51. Substantial discussion took place on the provisions related to the disqualification criteria that could affect prospective charity trustees.
52. Throughout the evidence sessions it became clear there was a lack of understanding around rules related to bankruptcy, and the potential impact of this criterion on trustee diversity. Concerns were raised with regard to those whose lived experience may add value to a particular charity, as well as on charities' ability to recruit trustees and senior managers with particular expertise.
53. On aligning the disqualification criteria with the rest of the UK, opinion was divided. Some witnesses took the view that Scotland has an opportunity to take a different approach that was proportionate, while others emphasised the importance of due diligence.
54. OSCR and the Cabinet Secretary sought to address concerns around the publicly searchable record of disqualified trustees in relation to potential cases of mistaken identity.

Disqualification criteria – undischarged bankruptcy

55. Several witnesses were concerned about bankruptcy as a disqualification criterion, particularly in light of the cost-of-living crisis, which could increase instances of this.
56. Volunteer Scotland specifically recorded their thoughts—

” We feel that the criteria for automatic disqualification might be a bit too punitive, particularly around bankruptcy. In some ways, it is almost like it is criminalising poverty, particularly given where we are at the moment because of the cost-of-living crisis...it feels unfair that that would be an automatic barrier to people becoming a trustee, particularly given the number of charities in Scotland that are supporting people who are experiencing poverty. There is a direct challenge if we want to have trustees who have lived experience when poverty is one of the key focuses.³⁰

57. However, OSCR clarified that personal bankruptcy is an existing criterion for disqualification that has been in place since the 2005 Act.³¹

58. The Cabinet Secretary provided further explanation of the existing legislation in a follow-up letter to the Committee—

” Undischarged bankruptcy is an existing criteria for disqualification under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act), it is not one of the new criteria introduced by the Bill. In addition, the ability to apply to OSCR for a waiver to the disqualification is already provided for by the 2005 Act. Many of the existing and new criteria for disqualification are time limited, not permanent, the disqualification falls when a specified conviction is spent, or a bankruptcy discharged.³²

59. The Cabinet Secretary also stressed in evidence to the Committee that the disqualification period in relation to bankruptcy could be relatively short – “a matter of months, in some cases”.³³

60. OSCR acknowledged the lack of awareness on undischarged bankruptcy as a current disqualification criterion could be a problem. They suggested communication about the implementation of this Bill could provide an opportunity to explain more clearly existing and new regulations.

Impact on the diversity of charity trustees and senior managers

61. Volunteer Scotland noted concern that “default disqualification would create issues for a lot of people from more marginalised groups.”³⁴

62. While SCVO (Scottish Council for Voluntary Organisations) said—

” If a person is automatically disqualified, it can give the impression that they face an uphill battle to prove that they are worthy of being a trustee.³⁵

63. They added—

- ” It would be very easy for a person to entertain the idea of becoming a trustee, find out that they are automatically disqualified because of something that occurred in their background and decide that it is simply not worth the hassle. We really need to avoid that happening.³⁶
64. Edinburgh Rape Crisis Centre agreed it is important that those with lived experience are not excluded from becoming a trustee or senior manager of a charity³⁷. Alzheimer Scotland made similar points—
- ” The participation of the voice of lived experience should be actively encouraged to ensure that that creates transparency from the ground up rather than from a top-down perspective.³⁸
65. Edinburgh Rape Crisis Centre questioned how it can be ensured that disqualification processes do not “create or reinforce fear of the state or state intervention, particularly for people from certain marginalised communities”.³⁹
66. Bòrd na Gàidhlig discussed the impact of the disqualifying criteria on rural and island organisations. Due to demographic change, they said there are fewer people available to become trustees. On top of this, they advised there is a heightened sense of reputational risk in small communities meaning issues need to be “handled extremely carefully”. However, Bòrd na Gàidhlig added, while they want to make sure people do not feel deterred from participating, those in positions of authority within organisations need to have confidence the process is robust.⁴⁰
67. The Law Society of Scotland were more reassured, asserting OSCR “is a proportionate and reasonable regulator” and they “do not think that particular groups will be affected in different ways”.⁴¹
68. In terms of the process for waiving disqualification, OSCR said that in those circumstances, the burden of proof would lie with the applicant, as well as potentially with other trustees making a case for the exception. In such a case OSCR advised they would reflect on the activities and purpose of the charity in question, along with whether the person seeking the waiver is particularly suited to trusteeship based on their skills and experience. They would also consider how the charity would deal with any associated risks that could arise as a result of the appointment. OSCR also noted that this regulation already sits within existing legislation and operates as such.⁴²
69. SCVO said the waivers of disqualification must be proportionate and not off-putting to individuals from “marginalised areas of the community or from different backgrounds.” They added it is about “optics and communication” and that prospective trustees need to know the process will not be complex or intrusive.⁴³

Rehabilitation of offenders

70. Concerns were raised at the Committee’s informal engagement session⁴⁴ that ex-offenders who might want to become a charity trustee, as a way to rebuild their life,

could not because they are disqualified until their conviction is spent.

71. OSCR advised ex-offenders could still be involved by volunteering for a charity, or even working for a charity in specific roles, as long as trustees are happy with this.⁴⁵
72. The Cabinet Secretary agreed with this approach, while setting out the importance of sectoral understanding of the process—
- ” “...being disqualified does not stop someone volunteering or working with the charity in a role other than that of a trustee and having a different kind of day-to-day interaction with the charity. What will be important is communication from OSCR to ensure that people understand the current process, the waiver and the opportunity for the individual in question to continue their relationship with a charity in some other role.”⁴⁶
73. The Faculty of Advocates agreed this was a helpful point as an individual could still add value to the work of a charity despite not being a trustee or senior manager.⁴⁷

Extension of disqualification provisions to senior managers

74. Volunteer Scotland was concerned the extension of the disqualification criteria to senior management positions could present recruitment challenges similar to those the sector faces regarding trustees and said that this was an issue given moves within the sector for all positions within organisations to be more representative of communities.⁴⁸
75. The Law Society of Scotland said the extension of the disqualification rules “seems sensible”, and that senior management being subject to the same regulations is “reasonable”.⁴⁹
76. OSCR underlined they were in favour of the proposal from the perspective of public trust and confidence—
- ” Given the kind of decision making that charity trustees sometimes delegate to senior members of staff on charities’ operation and decision making, where people would be disqualified if they were a charity trustee, we think that there is a need to guard against that sort of vulnerability in order to meet legitimate public expectations and maintain public confidence.”⁵⁰
77. OSCR further stated the disqualifications criteria would likely form part of the due diligence employers undertake anyway, and the numbers involved are unlikely to have a significant effect on recruitment.⁵¹

Alignment with UK regulations

78. Volunteer Scotland considered there does not need to be harmonisation for the sake of it and there is an "opportunity for legislation in Scotland to go further". However, they said this might be better done as part of the wider review of charity law rather than the Bill.⁵² They added Scotland's approach to disqualification could be "much more inclusive"⁵³ and is the "biggest issue that needs to be dealt with in a future review of charity legislation".⁵⁴
79. The Charity Law and Policy Unit agreed, stating while there is an argument for uniformity across the UK, the approach to granting waivers "could be much softer and could be done by OSCR on a policy basis" and "could be given informally for people with undischarged convictions or bankruptcy".⁵⁵ However, they recognised that this would mean the regulator taking on some form of responsibility for the risk that would result from this approach.⁵⁶
80. With regard to disqualification criteria across the UK, Volunteer Scotland added that it is useful to have a level of consistency, but made an additional point regarding the sharing of information:
- ” There is a value in having a degree of consistency but, if we are looking at cross-border sharing of information, it would also be useful to have a clear set of guidelines around how information is shared and what information can be shared. For example, if Scotland strengthens its position around disqualification and the information that it holds around that, and if that exceeds the cross-border level, we will have to consider what information should be shared in comparison with our neighbours.⁵⁷
81. The Charity Commission for England and Wales agreed that when it comes to the provisions around automatic disqualification, the Bill is helpful in aligning with regulations across the border.⁵⁸ OSCR advised it believes "very strongly that it is sensible to have the same disqualification criteria across the UK"⁵⁹, and that they have no plans to go further than the equivalent criteria for England and Wales.⁶⁰
82. ICAS (The Institute of Chartered Accountants of Scotland) pointed out that trustees of a charity in Scotland may also be trustees of charities in other jurisdictions across the UK, and it therefore makes sense to have the same criteria in place⁶¹. The Charity Law Association agreed, especially in respect of cross-border charities.⁶² They added that, without a register of those who have been disqualified, carrying out due diligence is challenging.⁶³

Publicly searchable record of disqualified trustees

83. On whether it is appropriate for OSCR to maintain a publicly searchable record of trustees who have been disqualified, Volunteer Scotland said, if the criteria related to disqualification is challenged, then having the publicly searchable record would not necessarily be needed. However, they said the record should also exist to reduce administration and make sure recruiting trustees is not made more difficult

by organisations being unable to find information on whether someone could be a trustee. Ultimately, they considered the provision improves due diligence.⁶⁴

84. OSCR was specifically asked about how cases of mistaken identity could be avoided. The regulator advised the register will provide a level of detail that includes the original court decisions, along with the personal details needed to identify the person. However, should there be any uncertainty, charities could contact OSCR for clarification.⁶⁵
85. The Cabinet Secretary said there have been “around 50” people barred from acting as trustees by the Court of Session since 1990 and that it is essential that charities looking for trustees have access to information on whether an individual has been removed from such a role previously. She also emphasised OSCR’s point that if an organisation has doubts around someone’s identity, they can get in touch with OSCR, and that a similar system works well in England and Wales.⁶⁶
86. Regarding disqualifications, the Cabinet Secretary was asked whether the Scottish Government is open to having separate rules in Scotland which would allow those normally disqualified to act as trustees with restrictions to their remit in place. The Cabinet Secretary emphasised the Bill reflects criteria around misconduct the Scottish Government believes makes an individual unsuitable to act as a trustee. She underlined this is because the role involves the management of resources the public have donated.⁶⁷
87. In addition, she said it is important all trustees are treated the same and they are “equally responsible” for the running of the charity⁶⁸. The Cabinet Secretary caveated this by saying the Scottish Government understands “the need to ensure diversity of experience on charity boards”⁶⁹ and that a person who faces disqualification may have relevant experience they could bring to the role. She said OSCR therefore has discretionary oversight of potential waivers—

” “The existence of the waiver mechanism means that, although disqualification is automatic, it is not absolute, and it can be waived at the regulator’s discretion.”⁷⁰

Conclusions and recommendations

88. It was clear to us that there is significant confusion surrounding undischarged bankruptcy as a disqualification criterion and believe that communication is needed from OSCR to clarify the regulation to the sector. We think this should be part of a wider communication piece that OSCR leads, to ensure the sector know the changes are coming, what they mean and how they will be applied. We think it is important that the burden of admin and delivery of the communications strategy for the changes is not on the third sector, that they should be involved, but not expected to be the communicator.

89. **In terms of concerns related to the diversity of trustees and senior managers, we recognise the value those with lived experience can add to a**

particular organisation and therefore ask the Scottish Government and OSCR to ensure the waiver process is well understood by the sector and that any administration associated with it is kept as straightforward as possible.

90. We support the provision to extend the criteria for disqualification to senior management positions. Senior managers can have significant responsibility for charitable funds and running the organisation, and we consider it is the right thing to do in terms of transparency and accountability. It should also boost public confidence in the sector.

91. We are also of the view it is sensible for Scotland to align its disqualification criteria with the rest of the UK to enhance the sector's ability to carry out due diligence.

92. **Similarly, we are supportive of the provision to create a publicly searchable record of disqualified trustees from the perspective of due diligence and are satisfied that OSCR will have sufficient information and processes in place to avoid cases of mistaken identity. Again, we recommend the Scottish Government and OSCR communicate with charities to ensure they are aware they can contact OSCR if there are any concerns relating to potential mistaken identity.**

Appointment of interim trustees by OSCR

93. Section 8 of the Bill provides OSCR with a power to appoint interim trustees.
94. OSCR already has such a power under the 2005 Act where a charity does not have enough trustees to form a quorum to appoint further trustees under the terms of its governing document, and where the governing document does not specify a mechanism for appointing trustees in these circumstances. This intervention must be at the request of the charity concerned.
95. Discussions on this aspect of the Bill highlighted serious concerns stakeholders had regarding OSCR's ability to find individuals willing to act as interim trustees.
96. Volunteer Scotland specifically raised this, as well as questioning what would be needed for the process, given organisations often find recruiting trustees difficult. They added in the "current climate... trustees are a bit like gold dust"⁷¹ and stated—
- ” “I am a bit confused about how OSCR would be able to appoint people with local knowledge and knowledge of the client group. That would be quite a challenge.”⁷²
97. SCVO agreed and pointed to the challenges many organisations are facing recruiting trustees—
- ” In OSCR's Scottish charity and public survey last year, 25 per cent of charities in Scotland said that recruiting trustees is a difficulty. If a quarter of around 25,000 charities in Scotland are finding a difficulty with recruiting trustees, in the search for transparency and accountability, we need to make sure that we are not compounding some of the struggles that charities are already facing.⁷³
98. The Cabinet Secretary said OSCR indicated it could advertise for interim trusteeships in the local press and that a recruitment panel could be brought together with help from TSIs, like SCVO. She added TSIs could keep lists of those willing to act as interim trustees for each local authority area.⁷⁴
99. The Cabinet Secretary was asked about disputes regarding the recruitment of interim trustees. She said while the Bill does not contain a specific mechanism for dealing with this, OSCR could work with charities on a case-by-case basis to find resolutions.⁷⁵

Conclusions and recommendations

100. We are concerned by evidence taken around challenges in trustee recruitment and question how easy it will be for OSCR to appoint individuals willing to act on a temporary basis.

101. **We ask OSCR to provide more information to the Committee on how it expects to be able to recruit interim trustees, and how often it believes it will need to do this. It would be helpful to have this information in advance of any Stage 2 consideration of the Bill. We would like to know if there will, for example, be a Scotland-wide panel of trustees to draw from.**

102. **We ask the Scottish Government to review whether this provision would benefit from a dispute mechanism to address potential issues regarding the appointment of interim trustees before any Stage 2 consideration.**

Charity accounts

103. Sections 9-11 of the Bill set out proposals in relation to charity accounts.
104. Section 9 introduces a duty on OSCR to publish accounts for all charities on the Register, which is a public register.
105. Section 10 of the Bill makes minor and consequential modifications in relation to charity accounts, including to change references to "account" in the 2005 Act to refer to "account and independent report on accounts".
106. Section 11 of the Bill provides OSCR with powers to remove a charity from the Register if it has failed to submit accounts and has also failed to engage.

Publication of accounts

107. OSCR said these provisions are needed because, now that it is possible to “put all of a charity’s accounts online fairly easily”, all opportunities to improve transparency and increase public confidence in the sector should be taken. The regulator indicated, as part of the 2005 Act, OSCR must act proportionately and this will be borne in mind as the Bill’s provisions are implemented.⁷⁶
108. CHAS was very supportive of charities publishing their accounts. They recognised the level of detail should be proportionate to organisations but argued—
 - ” the principle is important, and publishing that information promotes public confidence.⁷⁷
109. CHAS added they release a 100-page report to the public annually, which includes “full accounts, full reporting on activity and a lot of detail on charity governance”. They further stated, while data protection is important, there is a lot that charities “can and should do to describe their work”. They said CHAS are comfortable with this and propose that other charities would be as well.⁷⁸
110. Edinburgh Rape Crisis Centre told us—
 - ” ...we believe that charities should publish their accounts but that OSCR should provide some support to ensure that those reading the accounts understand what they mean, as well as support for charities who find that that information is used maliciously against them, which is a possibility if the accounts are not read accurately.⁷⁹

Failure to submit accounts

111. The Bill would allow OSCR to remove a charity from the register (thereby removing its charitable status) if a charity fails to submit accounts, and subsequently fails to engage with OSCR in related communication.
112. Regarding whether this is an appropriate measure, a number of submissions

argued this should be a last resort and OSCR must provide support and guidance to help charities comply with the legislation. Alzheimer Scotland suggested there could be a good reason why an organisation has not met their obligations in this regard, such as capacity or administrative issues⁸⁰ and argued—

” A desire to be able to do something but being unable to do it is not the same thing as being unwilling to do something.⁸¹

113. In evidence OSCR emphasised that an organisation would not lose its charitable status just because it had not submitted accounts, it would also have to be failing to engage with the regulator. This would be a safeguard for charities “genuinely struggling to get their accounts finalised”⁸². OSCR explained that prior to removing a charity from the Register—

” There would have to be a pattern of attempts to engage with it, and then we would need to publish the fact that we were going to remove it for a time to allow it to come back and say, “Wait a minute—you can’t do that. We’ll have our accounts ready by Tuesday.” If we do remove it, that decision can be subject to the statutory review procedure in the 2005 Act, and if the charity does not like the result of that review, which is carried out internally by us, there can be an appeal to the Charity tribunal.⁸³

114. The Cabinet Secretary told us that once OSCR has issued the charity in question with notice of its intended removal, it has three months to make contact. If it does so, the process is halted and OSCR would then support the charity to comply.⁸⁴

115. The Cabinet Secretary also said OSCR will use the power with discretion—

” It is not in anybody’s interests for a charity that is doing good work to end up being removed from the register because of practical issues or problems that have emerged within the organisation.⁸⁵

116. The Methodist Church in Scotland made a specific point about the individual charities that are affiliated with a parent charity—

” ...all our church councils are individual charities, and the Methodist Church is the parent charity. Therefore, if a particular church was not doing what it should be doing, if notice could be given to the parent charity at the same time as the notice was given to the individual charity, the centre would understand that there was an issue, which it might not have been aware of, and could seek to address it.⁸⁶

117. On communication with parent charities, OSCR explained “unless the parent charity is a designated religious charity, there is no formal provision for parent charities to be involved” and they “do not have specific powers to share information with parent charities in the way that we can share it with other regulators or statutory bodies”. Having said that, they clarified they do work with parent charities on a regular basis, such as when smaller organisations fail to submit accounts.⁸⁷

118. The Cabinet Secretary reflected the points around parent charities, saying if a charity does not provide accounts when it should, this shows up on OSCR’s register, which it can then pass onto the parent charity if it wishes. She specifically

said this applies where a church body is not a designated religious charity.⁸⁸

Conclusions and recommendations

119. We acknowledge these provisions aim to improve transparency, accountability and public confidence and the Committee supports them.

120. OSCR have a procedure in place to deal with non-compliance and to support organisations to fulfil their reporting obligations. We are satisfied the process gives OSCR sufficient flexibility to take a nuanced approach in response to the individual circumstances of a breach.

Charity mergers

121. Section 12 of the Bill relates to the recording of charity mergers and the treatment of legacies affected by charity mergers.
122. The Charity Law Association said the register provided for in the Bill “is not as comprehensive as the register of mergers in England and Wales” as it only relates to legacies and not to lifetime gifts.⁸⁹
123. On this point the Cabinet Secretary said the “policy intention is to capture those cases in which the donor is not able to change where the gift goes—for example, because they are deceased”.
124. The Cabinet Secretary’s Official added the provision on the record of mergers was incorporated after dialogue with the Law Society in which only the matter of legacies in wills was raised. Moreover, they said no-one has mentioned an issue with lifetime gifts, but that this could be picked up with those working in law if needed.⁹⁰

Conclusions and recommendations

125. **We ask the Scottish Government to examine the suggestion that lifetime gifts be addressed within the merger provisions for this Bill and provide us with an analysis of the benefits and disadvantages in advance of any Stage 2 consideration of the Bill.**

Ability to issue positive directions

126. Section 15 of the Bill allows OSCR to make positive directions to charities following inquiries into charities where concerns have been raised.
127. The 2005 Act provides for some direction giving powers, but these largely involve negative directions i.e., requiring a charity not to do certain things, or to stop doing certain things. The Bill provisions would provide more general direction-giving powers, including positive directions e.g., directing a charity to ensure a conflict of interest is properly managed.
128. This provision was broadly supported, although questions were raised in relation to the circumstances under which positive directions could be issued.

Guidance on positive directions

129. SCVO said that insufficient detail has been provided and that the sector will need clarity regarding when, and in what circumstances, positive directions can be used. They added OSCR may have to undertake "extensive engagement" to ensure organisations have the guidance and support they need, and this could be burdensome.⁹¹
130. The Charity Law and Policy Unit recommended that OSCR could create guidance on when positive directions could be issued as, while the power "seems reasonable and proportionate", its function is not clear.⁹²
131. The Cabinet Secretary offered some clarification regarding when positive directions would be used:
 - ” ...there are a number of areas in which OSCR anticipates using a positive power of direction. Those include directions to appoint additional trustees to form a quorum or to meet a minimum number that is specified in a governing document; to take a specific action in line with the charity’s governing document, such as holding an annual general meeting to make a specific decision; to take action to remove a trustee in line with the powers that they have; to manage a conflict of interest effectively and demonstrably; and to prepare and submit a compliant statement of accounts.⁹³
132. She added that non-compliance would be treated as misconduct and OSCR would take any action as appropriate.⁹⁴
133. OSCR further clarified to issue a positive direction they would have to demonstrate misconduct had taken place or that assets needed protection.⁹⁵ The Charity Commission for England and Wales commented this is a power they use “fairly regularly”.⁹⁶
134. The Cabinet Secretary was asked how frequently the Scottish Government expects OSCR’s power to issue positive directions to be used. She advised it is unlikely to be used a lot—

” The [OSCR’s] annual report for 2021-22 shows that, in that year, OSCR opened 60 new inquiries about charities and closed 99 inquiry cases. There was one incidence of regulatory powers being used, and a third of inquiry cases closed with recommendations or guidance to trustees.⁹⁷

135. She added a positive direction would only be prescribed once an inquiry had taken place and it was decided formal action needed to be taken, either as a result of misconduct or to “protect charitable property”. She stated OSCR would be obliged to produce a report if a direction was made.⁹⁸

Exemption for Designated Religious Charities (DRCs)

136. As the Cabinet Secretary explained, the 2005 Act “recognises that many religious bodies operate effective self-regulatory mechanisms through internal supervisory and disciplinary functions”.⁹⁹ On this basis, designated religious charities will be exempt from receiving positive directions from OSCR through the Bill, as is the case with certain of the existing direction-giving powers.

137. The Methodist Church in Scotland suggested that this approach should be extended beyond DRCs arguing although they are not a DRC—

” ...much like the Church of Scotland, we have our own legislation, acts of Parliament and subordinate legislation that govern our discipline and procedures, so we have a very robust system in place.¹⁰⁰

138. Other witnesses were either opposed to DRCs being exempt from positive directions or felt more work was needed to review the position. The Charity Law Association said some of its members are opposed to special treatment for DRCs, however they noted that DRCs have their own internal structures which “means that, hopefully, they can police any areas of difficulty, including misconduct”.¹⁰¹

139. The Cabinet Secretary told us some of the wider issues raised by witnesses could be considered in the review.¹⁰²

Conclusions and recommendations

140. **We are satisfied the provision to issue positive directions is appropriate and proportionate, however we ask the Scottish Government to confirm OSCR’s guidance on the implementation of this section is clearly communicated to the sector to provide the reassurance required.**

141. **We acknowledge the diversity of opinion regarding exemptions for designated religious charities and recommend the Scottish Government ensures the issue is covered as part of the wider review.**

Charity connection to Scotland

142. Section 16 of the Bill specifies that OSCR should not be required to register a charity that has no connection with Scotland (or only a negligible connection).
143. There were no significant concerns raised regarding this provision, however there was some discussion regarding how the regulation would work in practice.
144. The Law Society of Scotland explained that the idea behind this provision is to allow OSCR to be able to consider organisations' connections to Scotland on a "case-by-case basis"¹⁰³. They explained that creating a definition that captures every instance of 'connection' is difficult—
- ” Greater precision would be good, but the difficulty lies in deciding what that greater precision would be and whether it would capture a situation that has not been considered in which a charity had a connection to Scotland that did not fit with a very tightly constructed definition of a connection to Scotland.¹⁰⁴
145. However, OSCR set out some examples of characteristics included in the Bill around what a connection to Scotland could look like—
- ” ...including having a physical footprint in Scotland, undertaking activities here and having charity trustees here.¹⁰⁵
146. SCVO said, at this stage, they are happy with the provision as it contains specific guidance for the regulator, although it could be looked at in future as part of post-legislative scrutiny. SCVO were happy that it “will not exclude, for example, cross-border charities that are based in Scotland but that work for the benefit of communities outwith Scotland”¹⁰⁶. Alzheimer Scotland also put their support for the provision on the record.¹⁰⁷
147. The Faculty of Advocates stated that the definition for a 'connection' to Scotland “should be kept under review” and “tweaked”, should problems arise. They reflected on whether a mechanism for examining how the provision is working in practice could be put in place.¹⁰⁸
148. The Cabinet Secretary asserted that OSCR is most suited to deciding what a 'connection to Scotland' means, but that any decision to remove a charity from the register would be subject to the appeal processes already provided for as part of the 2005 Act.¹⁰⁹

Conclusions and recommendations

149. **We are satisfied that the sector has no major concerns on this section, however we ask OSCR to monitor its operation, so an informed decision can be taken on its effectiveness.**

Data protection

150. The Committee explored concerns regarding data protection raised in written evidence, as well as those from the Information Commissioner’s Office (“ICO”) to the Cabinet Secretary.
151. The Cabinet Secretary said a consultation with the ICO took place as part of data protection regulations and that the ICO’s concerns were addressed as part of the policy development for the Bill. She stated that all provisions in the Bill “are consistent with general data protection regulation and the Data Protection Act 2018”.¹¹⁰
152. The Cabinet Secretary summarised, while there is a powerful argument for publicly accessible information related to charities’ accounts, this must be balanced by “appropriate safeguards”. She confirmed should there be a data breach, OSCR would be liable and the Scottish Government will therefore ensure the regulator has processes to avoid that.¹¹¹
153. The Law Society said they are keen that, following implementation of the Bill, data is properly protected—
- ” Between the legislation and what OSCR is doing in practice, we expect that ensuring that data is protected and is looked after properly will be central to that. Transparency and accountability are important, but public reassurance on that would be eroded if the data was not being looked after in a proper fashion.¹¹²
154. OSCR said they aim to ensure the implementation of the legislation, especially in relation to the trustee database, is compliant with data protection requirements. They set out some detail regarding how this will be achieved—
- ” There will be specific safeguards in relation to how we collect information from charities, which will relate to the privacy notices that we issue to charity trustees. We will ask them to confirm the information that has been submitted on their behalf. Through the annual return mechanism that charities are used to submitting to us, we will ask them to provide early confirmation of their charity trustees so that we can make sure that the data is accurate. There will also be an easy online mechanism to enable charities to update trustee details after the annual general meeting when they elect new trustees.¹¹³
155. The Charity Law Association said they have no reason to think OSCR would not comply with the requisite laws, particularly as the regulator is already responsible for the handling, control and release of data.¹¹⁴

Conclusions and recommendations

156. We are content that there are unlikely to be issues regarding OSCR’s handling of data based on its track record as set out in the evidence. However, given the changes the Bill will make, we believe it is important that safeguarding measures

are in place.

Charitable organisations' Gaelic name

157. As part of their written evidence, Bord na Gaidhlig stated they would like to see an organisation's name recorded in Gaelic as well as in English—
- ” “In terms of the information to be included on the Scottish Charity Register we believe it would be valuable in raising awareness of Gaelic – and of organisations that undertake Gaelic-related activities – for the Gaelic name of an organisation to be recorded as well as its name in English. This would contribute to achieving the National Gaelic Language Plan's objectives. It would also demonstrate equal respect for Gaelic alongside English.” ¹¹⁵
158. Bord na Gaidhlig also stated that, given the number of Gaelic-related charities in Scotland, OSCR may wish to consider the adoption of their own Gaelic Language Plan. ¹¹⁶
159. In response, the Cabinet Secretary said that, if a charity requests it, OSCR already includes the Gaelic name of their organisation on the register. Further to this, she said whether the whole register could be replicated in Gaelic is OSCR's role to consider as an independent public body. ¹¹⁷

Communicating legislative changes

160. Despite broad support for the provisions in the Bill, stakeholders expressed concern regarding the lack of clarity around implementation of the proposed Bill. It was widely felt OSCR will have to undertake a substantial amount of engagement following passage of the legislation to reassure the sector and to clarify new and existing obligations.
161. Evidence indicated areas of specific importance for clarity included: inclusion of trustee names on the public register, collection of trustee details for OSCR’s internal use, publication of accounts, penalties for non-provision of accounts, criteria for the disqualification of trustees and details on the operation of the waiver schemes and applications for dispensation from publication of information.
162. CHAS said more information will be needed—
- ” I think that OSCR will need to provide detailed guidance in quite a number of areas about how it intends to use those powers through the publication of its regulatory policies so that there is transparency and understanding between the regulator and charities about how the powers will work in practice. ¹¹⁸
163. Alzheimer Scotland felt the regulator must lead by example—
- ” It is important that openness and transparency not only come from the third sector towards OSCR but are reflected back the way and that the openness and transparency start from OSCR and work their way down from there. ¹¹⁹
164. In response to these concerns OSCR said, while many of the new measures in the Bill are “expansions or augmentations” of things that are already done, they are “thinking hard about a communications campaign and strategy” and there will be “intensive communications during implementation.” ¹²⁰
165. OSCR also indicated it may do some targeted work with organisations more likely to face issues, such as women’s aid charities. ¹²¹ After implementation, the regulator said it will look at what is needed with regards to ongoing support. ¹²²
166. Subsequently, OSCR wrote to the Committee to provide more information about its communications plan. They said they would begin by alerting charities to the legislation and would then engage directly with each charity, as well as with “representative and umbrella bodies”. OSCR said—
- ” The phasing of subsequent communication and engagement work will reflect decisions made about the commencement of the measures contained within the Bill. The content of the communications programme will explain the nature of the measures, as defined by Parliament and the Scottish Government, in Primary and Secondary Legislation. It will also be influenced by any changes to existing guidance published by OSCR and will reflect feedback on possible impact of the measures emerging from the evidence to the Committee as well as our own stakeholder engagement. ¹²³
167. OSCR further advised it has several established ways of communicating with the

sector, which will be used alongside in-person meetings and events.

Cost and administrative burden for charities

168. The Committee heard several stakeholders felt they did not have enough information regarding the impact of the Bill on their financial and administrative capacity. Concerns were raised about the potential burden, especially for smaller charities and those run by volunteers.
169. Alzheimer Scotland summarised concern felt by representatives of the third sector—
- ” The lack of detail certainly means that it is difficult to fully assess the administrative and financial burden that will be placed on charities, regardless of their size. However, it is inevitable that additional administrative activities will have to go on to support the suggestions and proposals that have been put forward in the Bill, and there will be a cost associated with the delivery of those. The ability of charities to deliver that will be very much dependent on their structure and whether they can absorb such activities into their existing activity. If not, it might have a further impact through the need to fundraise or source alternatives to meet the administrative burden.¹²⁴
170. Bòrd na Gàidhlig emphasised that many of the organisations they deal with do not have employed staff and any additional pressure placed on volunteers could affect charities’ output. They said a balance needs to be struck between transparency and organisational capacity and support from OSCR and SCVO could help.¹²⁵
171. The Charity Law and Policy Unit said for some smaller charities, the Bill imposes “frictions rather than costs”. They elaborated saying, while it will not necessarily create additional costs, it means organisations will have to be organised to make sure OSCR gets all the information it requires.¹²⁶
172. The Cabinet Secretary explained you would not expect the detail of implementation to be in the Bill, because OSCR, as an independent public body, will want to detail how it will implement the new powers and duties.
173. However, she also sought to alleviate concerns by explaining the Bill does not fundamentally change the regulation of charities, it instead simply enhances and clarifies the current framework.¹²⁷
174. The Cabinet Secretary stressed the information charities will be obliged to provide should already be held by them and the recording of details will happen through the system OSCR already uses, so charities should be familiar with this.¹²⁸
175. The Cabinet Secretary ultimately asserted the benefits of the Bill to the sector will “far outweigh the very minor costs to charities”.¹²⁹

Conclusions and recommendations

176. **While we appreciate many provisions in the Bill are updates to elements of**

the 2005 Act, it is clear the sector needs more information about what will be expected of them. Should the Bill be passed, we ask OSCR to share with the Committee its draft communication plan in advance of its engagement with the sector.

177. **Regarding charities concerns about preparing for the changes in the Bill, we ask the Scottish Government to set out its plans for commencement of the Bill in advance of any Stage 2 consideration.**

Administrative burden for local authorities and auditing threshold

178. In their response to the Finance and Public Administration (FPA) Committee’s call for views on the Financial Memorandum (FM) accompanying the Bill, Aberdeen City Council said the FM had been put together based on the idea there would be no costs to local authorities as they would “be able to pass on all “administrative” costs to charities.” However, they argued this would not always be the case and local authorities may be forced to absorb costs in order to support some charities.¹³⁰
179. The Council said it is specifically concerned about the extra costs in keeping OSCR up to date. They proposed a potential financial threshold with charities falling below that threshold not having to follow reporting requirements.¹³¹
180. OSCR told us, in relation to charities supported by local authorities—
- ” We have worked very successfully with a number of local authorities to streamline their holdings of charities. Where they have been able to do that, their costs will be proportionately lower, so the situation is probably a lot better than it would have been a few years ago.¹³²
181. On whether there should be an income threshold regarding reporting requirements, the Cabinet Secretary said more than half of charities in Scotland have an income less than £25,000 and are therefore seen as small. She commented that if exemptions were granted it would defeat the stated aim of improving transparency and accountability as OSCR and the public would be denied access to information on a large part of the sector.¹³³
182. However, the Cabinet Secretary noted that the detail required in charities’ financial reporting is already dependent on an organisation’s income¹³⁴. Smaller charities do not have to provide fully audited accounts, they can provide accounts that have been subject to a less rigorous “independent examination” process¹³⁵.

Resource for OSCR

183. The Committee was interested in whether OSCR is confident it will be able to fulfil its functions under the proposed Bill without additional resource.
184. Edinburgh Rape Crisis Centre questioned whether the new regulations would mean that organisations had greater interaction with OSCR, and to what extent the regulator would have capacity for this.¹³⁶
185. SCVO’s submission to the FPA Committee on the FM considered the level of communication and engagement with the sector needed from OSCR “may have been underestimated to some extent” and the FM may therefore also be an underestimate¹³⁷, and in oral evidence to the Committee said—
- “...it is about not only the administrative burden, but the burden that will come with the sheer amount of comms that we would expect from the regulator after the changes.”¹³⁸
186. OSCR’s submission to the FPA Committee stated the FM was developed with the regulator’s “extensive input”. They believe the FM is “an accurate representation of future costs to OSCR related to the implementation and operation of the measures currently contained in the Bill”. They advised the FPA Committee that OSCR is liaising with the Scottish Government to make certain there will be enough funding to implement the Bill’s provisions.¹³⁹
187. The Cabinet Secretary added funding for OSCR more broadly will be “negotiated in the usual way, taking into account the projected costs of its functions at that time.” Moreover, she said “additional staff costs have been calculated on the assumption of 3 per cent annual uplifts to salary figures for 2021-22.”¹⁴⁰

Conclusions and recommendations

188. We appreciate that, given the number of small charities in Scotland, it would not be appropriate to have a threshold in place for reporting requirements as this would be counterproductive to increasing transparency and accountability, as well as impacting on public confidence in the sector.

189. **We recognise the financial and administrative resources concerns the sector has expressed about the implementation of the Bill. We accept OSCR and the Scottish Government’s reassurances that the proposed extension to the existing regulatory framework and additional obligations should not be too burdensome. However, we draw attention again to the need for extensive and effective communication with the sector.**

190. We are reassured that OSCR will work with charities to support them if they are facing difficulties in meeting their obligations in relation to financial reporting.

191. Through the course of our work programme, we intend to scrutinise OSCR and will consider any resourcing issues at that time.

General Principles of the Bill

192. There is general agreement that the Bill would help to improve transparency and accountability in the charity sector, as well as strengthening OSCR's current powers and achieving greater consistency with other UK jurisdictions.
193. From our scrutiny, it is clear charities are more apprehensive about how the provisions will work in practice, than those professionally associated with the sector. It is therefore essential OSCR works with the sector to allay charities' concerns through the support and guidance it provides.
194. We consider the Bill's provisions are appropriate and proportionate, and needed to support OSCR in fulfilling its role as the regulator.

Conclusions and recommendations

195. **The Social Justice and Social Security Committee supports the general principles of the Charities (Regulation and Administration) (Scotland) Bill and commends them to the Scottish Parliament.**

Annexe A: Review of charity law

196. Charities and other organisations involved with the sector were keen for there to be a wider review of charity law. The Scottish Government intends to undertake a wider review of the charity sector and we highlight below issues raised by stakeholders as part of our work on this Bill:

- Stakeholders explicitly stated the review must be independent and carried out in consultation with a wide range of people and organisations across the third sector, engaging with organisations in a range of ways to increase participation, particularly with smaller charities. It was also felt a wider review could address a lack of diversity regarding trustees in the sector.
- There were calls for the regulatory process to be streamlined as the sector is not solely regulated by the 2005 Act. A variety of different regulators, duties and obligations are in effect and therefore a holistic approach to regulation needs to be taken.
- The charity test was an area suggested for consideration as part of the review, including a review of the definition of public benefit.
- Reforms to the process for becoming a Scottish Charitable Incorporated Organisation (SCIO) were suggested, particularly in relation to assisting smaller, unincorporated organisations convert to this legal form. Clarification of provisions relating to the winding up and dissolution of charities were also sought, as well as amendments to address technical obstacles to reorganisation, and reforms relating to the treatment of royal charter/warrant and enactment charities.
- It was also highlighted that statutory clarification of requirements related to notifiable events¹⁴¹ is needed.
- More scrutiny of charitable status as applying to public sector actors, particularly ALEOs (arms-length external organisations), was welcomed, as well as the opportunity to scrutinise asset ownership of charities registered in England and Wales, or other places outwith Scotland, who are significant land and/or building owners in Scotland in a wider review.
- The Charities Act 2022 in place in England and Wales was noted as legislation to be aware of as the review takes place.
- In terms of timescales, some respondents were keen that the review take place soon.

Charity auditor availability

197. Although the financial reporting provisions in the Bill do not cover auditing services, ICAS¹⁴² highlighted reports from its members in public practice that “they are not able to offer audit services to charities due to an increased demand for their services from other sectors or that they are withdrawing from the audit market altogether”.

198. ICAS therefore suggest the auditing threshold for charities should be reviewed. They note the threshold has remained the same since 2005 when it was set at £500,000, while in England and Wales it was raised to £1 million in 2015. When giving evidence the Cabinet Secretary said the reason for the difference is down to the lower income level of charities in Scotland.
199. ICAS also suggested “consideration should be given to reviewing the audit threshold’s gross assets condition of £3.26 million, which was increased from £2.8 million in 2011”
200. The Director of the Society of Antiquaries of Scotland ¹⁴³ also wrote to the Committee highlighting that some charities face issues in finding auditors and suggested OSCR should carry out research into the scale of the problem.
201. With the threshold at £500,000, around 6% of Scottish charities are required to submit fully audited accounts. If the threshold was raised to £1 million, a slightly smaller proportion (4%) would be required to prepare fully audited accounts. Other Scottish charities are required to have their accounts independently examined, which is a less rigorous process. In England and Wales, with the threshold at £1 million, around 5% of charities are required to prepare fully audited accounts.
202. The bigger difference is that, in England and Wales, charities with an income of less than £25,000 are not required to have their accounts externally scrutinised. In Scotland, these smaller charities (which represent more than half of all charities) are still required to have their accounts independently examined.

Annexe B: Written and oral evidence

Submissions received: detailed consultation

Donald Campbell

Mr Drummond

Scottish Women's Convention (SWC)

Charity Law and Policy Unit, University of Liverpool

John Picton

Citizens Advice Scotland

Haemophilia Scotland

Bòrd na Gàidhlig

Zero Tolerance

Alzheimer Scotland

Aberdeen City Council

United Reformed Church Synod of Scotland

Children's Hospices Across Scotland

Edinburgh Rape Crisis Centre

Catholic Bishops' Conference of Scotland

Administration Board, General Synod, Scottish Episcopal Church

Turcan Connell

Aberdeenshire Voluntary Action TSI and Aberdeen Council of Voluntary Organisations TSI

Volunteer Scotland

Faculty of Advocates

David Hume Institute

ICAS

Charity Law Association

Institute of Legacy Management

Scottish Land Commission

Foundation Scotland

Church of Scotland

Scottish Council for Voluntary Organisations (SCVO)

South Lanarkshire Council

Carnegie UK

Methodist Church in Scotland

Law Society of Scotland

The Robertson Trust

Office of the Scottish Charity Regulator (OSCR)

Community Land Scotland (CLS)

Supplementary Submissions

Volunteer Scotland

Correspondence

Correspondence from ICAS Charities Panel following Charities (Regulation and Administration) (Scotland) Bill evidence session

Correspondence from the Society of Antiquaries of Scotland regarding the Charities (Regulation and Administration) (Scotland) Bill

Correspondence from OSCR following Charities (Regulation and Administration) (Scotland) Bill evidence session

Letter from Scottish Government regarding Stage 1 evidence of the Charities (Regulation and Administration) (Scotland) Bill

Official Reports

Official Report of Thursday 2 March 2023

Official Report of Thursday 9 March 2023

Official Report of Thursday 16 March 2023

Annexe C: Extracts of minutes of meetings

203. [33rd Meeting of 2022 \(Session 6\) Thursday, December 1, 2022](#)

1 Work programme (In Private):

The Committee considered its work programme and agreed an initial approach to the Charities (Regulation and Administration) (Scotland) Bill. It agreed to issue a call for views; consider in private at future meetings any approach to consideration of the Bill, consideration of evidence received, correspondence, and draft reports. Also, the Committee agreed to delegate approval of witness expenses related to the Bill's scrutiny to the Convener.

204. [2nd Meeting of 2023 \(Session 6\) Thursday, February 2, 2023](#)

2 Charities (Regulation and Administration) (Scotland) Bill (In Private): The Committee considered its approach to an informal engagement session.s

205. [3rd Meeting of 2023 \(Session 6\) Thursday, February 9, 2023](#)

4 Charities (Regulation and Administration) (Scotland) Bill (In Private): The Committee considered and agreed its approach to oral evidence at Stage 1.

206. [5th Meeting of 2023 \(Session 6\) Thursday, March 2, 2023](#)

1 Charities (Regulation and Administration) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Jason Henderson, Policy and Public Affairs Officer, Scottish Council for Voluntary Organisations (SCVO);
- Steven Inglis, Team Leader, Aberdeen City Council;
- Madelaine Sproule, Solicitor, Church of Scotland;
- Sarah Latto, Policy Officer, Volunteer Scotland;
- David Gibson, the Methodist Church's representative on the Scottish Churches' Committee, Methodist Church in Scotland;
- Vicki Cahill, Policy Officer, Alzheimer Scotland;
- Mridul Wadhwa , Chief Executive Officer, Edinburgh Rape Crisis Centre;
- Rami Okasha, Chief Executive Officer, Children's Hospices Across Scotland (CHAS);
- Shona NicIllinnein, Chief Executive Officer, Bòrd na Gàidhlig.

Miles Briggs indicated he chairs Heart of Scotland Appeal in Scotland.

Jeremy Balfour indicated he is a member of the Church of Scotland and a trustee of

a number of different charities of different sizes.

2 Charities (Regulation and Administration) (Scotland) Bill (In Private): The Committee considered the evidence heard earlier in the meeting.

207. [6th Meeting of 2023 \(Session 6\) Thursday, March 9, 2023](#)

2 Charities (Regulation and Administration) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Martin Tyson, Head of Regulation and Improvement, Office of the Scottish Charity Regulator (OSCR);
- Alan Eccles, Solicitor member - Charity Law Sub-Committee, Law Society of Scotland;
- John Maton, Assistant Director - Legal Services, Charity Commission for England and Wales;
- Dr John Picton, Senior Lecturer (Charity Law and Policy Unit), University of Liverpool;
- Nick Holroyd, Member, Faculty of Advocates;
- Gavin McEwan, Committee Member, Charity Law Association;
- Keith Macpherson, Member, ICAS Charities Panel.

Foyso Choudhury declared an interest as chair of the charity organisation Edinburgh & Lothians Regional Equality Council (ELREC).

3 Charities (Regulation and Administration) (Scotland) Bill(In Private): The Committee considered the evidence heard earlier in the meeting.

208. [7th Meeting of 2023 \(Session 6\) Thursday, March 16, 2023](#)

1 Charities (Regulation and Administration) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Shona Robison MSP, Cabinet Secretary for Social Justice, Housing and Local Government, supported by Caroline Monk, Head of Charity Law, Melissa Smith, Charity Law Policy Manager, Rebecca Reid, Solicitor and Megan Stefaniak, Solicitor, Scottish Government.

Foyso Choudhury declared an interest as chair of the charity organisation Edinburgh & Lothians Regional Equality Council (ELREC).

2 Charities (Regulation and Administration) (Scotland) Bill (In Private): The Committee considered the evidence heard earlier in the meeting.

209. [10th Meeting of 2023 \(Session 6\) Thursday, 27 April, 2023](#)

6 Charities (Regulation and Administration) (Scotland) Bill (Private): The Committee considered a draft Stage 1 report. Various changes were agreed to, and the report

was agreed for publication.

1 [Charities \(Regulation and Administration\) \(Scotland\) Bill](#)

2 [Policy Memorandum](#)

3 [Detailed Consultation](#)

4 [Short survey](#)

5 [02 March 2023](#)

6 [09 March 2023](#)

7 [16 March 2023](#)

8 [Informal Engagement Session, Wednesday 1 March 2023, 10:00-12:00](#)

9 [Charities \(Regulation and Administration\) \(Scotland\) Bill](#)

10 [Financial Memorandum](#)

11 [Policy Memorandum](#)

12 Policy Memorandum, paras 9-11

13 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 4.*

14 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 22.*

15 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 22.*

16 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 11.*

17 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 6.*

18 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 8-9.*

19 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 34.*

20 Faculty of Advocates, written submission.

21 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 9.*

22 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 14.*

23 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 36.*

24 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 8.*

25 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 8-9.*

26 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 9.*

27 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 26.*

28 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 27.*

- 29 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 27.
- 30 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 12-13.
- 31 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 16.
- 32 [Letter from Scottish Government regarding Stage 1 evidence of the Charities \(Regulation and Administration\) \(Scotland\) Bill](#)
- 33 Social Justice and Social Security Committee. *Official Report*, 16 March 2023, Col 17.
- 34 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 4.
- 35 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 14.
- 36 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 14.
- 37 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 25.
- 38 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 25.
- 39 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 27.
- 40 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 31-32.
- 41 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 16.
- 42 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 19.
- 43 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 10.
- 44 [Informal Engagement Session, Wednesday 1 March 2023, 10:00-12:00](#)
- 45 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 19.
- 46 Social Justice and Social Security Committee. *Official Report*, 16 March 2023, Col 18.
- 47 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 42.
- 48 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 13.
- 49 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 15-16.
- 50 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 15.
- 51 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 15.
- 52 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 12.
- 53 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 13.
- 54 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 19.

- 55 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 42.*
- 56 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 42.*
- 57 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 31.*
- 58 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 5.*
- 59 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 14.*
- 60 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 14-15.*
- 61 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 40.*
- 62 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 40.*
- 63 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 42.*
- 64 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 13.*
- 65 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 15.*
- 66 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 19.*
- 67 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 17.*
- 68 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 18.*
- 69 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 18.*
- 70 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 17.*
- 71 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 7.*
- 72 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 16.*
- 73 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 7.*
- 74 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 14.*
- 75 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 15.*
- 76 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 7.*
- 77 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 30.*
- 78 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 27.*
- 79 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 30.*
- 80 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 29.*
- 81 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 29.*
- 82 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 13.*

- 83 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 13-14.
- 84 Social Justice and Social Security Committee. *Official Report*, 16 March 2023, Col 12.
- 85 Social Justice and Social Security Committee. *Official Report*, 16 March 2023, Col 12.
- 86 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 12.
- 87 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 23.
- 88 Social Justice and Social Security Committee. *Official Report*, 16 March 2023, Col 12.
- 89 Charity Law Association, written submission.
- 90 Social Justice and Social Security Committee. *Official Report*, 16 March 2023, Col 15.
- 91 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 7.
- 92 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 44.
- 93 Social Justice and Social Security Committee. *Official Report*, 16 March 2023, Col 20.
- 94 Social Justice and Social Security Committee. *Official Report*, 16 March 2023, Col 20.
- 95 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 22.
- 96 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 23.
- 97 Social Justice and Social Security Committee. *Official Report*, 16 March 2023, Col 20.
- 98 Social Justice and Social Security Committee. *Official Report*, 16 March 2023, Col 19-20.
- 99 Social Justice and Social Security Committee. *Official Report*, 16 March 2023, Col 20.
- 100 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 16.
- 101 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 45.
- 102 Social Justice and Social Security Committee. *Official Report*, 16 March 2023, Col 20.
- 103 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 25.
- 104 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 25.
- 105 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 25.
- 106 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 17.
- 107 Social Justice and Social Security Committee. *Official Report*, 2 March 2023, Col 34.
- 108 Social Justice and Social Security Committee. *Official Report*, 9 March 2023, Col 45.
- 109 Social Justice and Social Security Committee. *Official Report*, 16 March 2023, Col 16.

- 110 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 12-13.*
- 111 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 13.*
- 112 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 24.*
- 113 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 24.*
- 114 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 45.*
- 115 Bord na Gaidhlig, written evidence.
- 116 Bord na Gaidhlig, written evidence.
- 117 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 6.*
- 118 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 26.*
- 119 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 26.*
- 120 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 10.*
- 121 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 10.*
- 122 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 11.*
- 123 [Correspondence from OSCR following Charities \(Regulation and Administration\) \(Scotland\) Bill evidence session](#)
- 124 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 35.*
- 125 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 35-36.*
- 126 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 38.*
- 127 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 7.*
- 128 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 9.*
- 129 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 22.*
- 130 Aberdeen City Council, written submission to the Finance and Public Administration Committee's call for views on the Financial Memorandum (FM).
- 131 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 18.*
- 132 Social Justice and Social Security Committee. *Official Report, 9 March 2023, Col 27.*
- 133 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 11.*
- 134 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 11.*
- 135 [OSCR - A Guide to Charity Accounts](#)

- 136 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 26.*
- 137 Scottish Council for Voluntary Organisations (SCVO), written submission to the Finance and Public Administration Committee's call for views on the Financial Memorandum (FM).
- 138 Social Justice and Social Security Committee. *Official Report, 2 March 2023, Col 7.*
- 139 OSCR, written submission to the Finance and Public Administration Committee's call for views on the Financial Memorandum (FM).
- 140 Social Justice and Social Security Committee. *Official Report, 16 March 2023, Col 21.*
- 141 This is when something serious has happened or is happening to a charity that threatens to have a significant impact on it or its assets ([OSCR | Notifiable events](#))
- 142 [Correspondence from ICAS Charities Panel following Charities \(Regulation and Administration\) \(Scotland\) Bill evidence session](#)
- 143 [Correspondence from the Society of Antiquaries of Scotland regarding the Charities \(Regulation and Administration\) \(Scotland\) Bill](#)

