SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE

Charities (Regulation and Administration) (Scotland) Bill – Stage 1

Informal Engagement Session, Wednesday 1 March 2023, 10:00-12:00

Summary Note

Background

The Charities (Regulation and Administration) (Scotland) Bill was introduced in the Scottish Parliament on 15 November 2022, following two consultation exercises by the Scottish Government in 2019 and 2021. The Bill aims to strengthen and update the current legislative framework for charities by increasing transparency and accountability, making improvements to OSCR's powers and bringing Scottish charity legislation up to date with certain key aspects of charity regulation in England, Wales and Northern Ireland.

The Social Justice and Social Security Committee are taking evidence on the Bill throughout March 2023. This began with an informal online engagement session on 1 March, where Members of the Committee met with a range of individuals from across the third sector as well as those representing accountancy and law firms.

Please find a summary of those discussions below.

Discussion

Q1. What is your general impression of what this Bill is seeking to do?

Participants indicated broad support but had concern around the lack of detail regarding some aspects of the Bill. They felt that the Bill's proposals were reflective of what OSCR wanted but it was indicated that not all charities will be aware of the proposed changes or how they will be implemented. Additionally, it was noted that there is not enough clarity in terms of processes and decisions regarding new powers for the regulator, such as the power to implement interim trustees.

However, it was stated that the ultimate objectives of transparency and accountability are recognisable and were broadly supported. It was also noted that regulatory harmony with England and Wales was welcomed in terms of the operation of cross-border charities.

Concerns were raised around the additional administrative burden that could arise as a result of the new legislation, not just for charities, but also for the Office of the Scottish Charity Regulator (OSCR). Participants highlighted that, at present, it is difficult to understand what the burden on individual charities will be, especially on small charities, because of the lack of detail on how the Bill proposals will be implemented. However, participants did acknowledge that this level of detail would not necessarily be appropriate in the primary legislation. It was indicated that efficient use of technology could reduce time spent on administration, but this remains to be seen. With regards to OSCR, it was pointed out that the powers the regulator will gain as a result of the Bill could save time and create efficiencies.

It was stated that a lot of charities feel they have been blindsided by the Bill due to the timescales involved and that in order for people working in the sector to have all the guidance they need to navigate the new expectations and regulations, OSCR will have a lot of work to do in terms of communication and engagement. There was concern that this potential burden on OSCR has been underestimated.

Companies House was pointed to as a system that works reasonably well in terms of data registration, and it was highlighted that a similar system could be helpful, especially for smaller charities.

Overall, the Bill and its aims were supported but participants felt they were still unclear in terms of some of its provisions, and that it would be useful to explore how the practical aspects of these and the requirements for charities will be taken forward.

Q2. The Scottish Government states that the Bill aims to improve transparency and accountability in the charity sector – do you think it achieves this aim?

Perceptions were that the Bill does broadly improve transparency and it was pointed out that the legislation requiring charities to provide copies of their annual accounts, including details of trustees, on request already exists. In this respect, the provisions in the Bill were not seen to be problematic.

Participants debated the need for transparency and accountability with the need for prospective trustees to have confidence in putting themselves forward for such positions. The potential impact of the legislation on trustee recruitment was noted as important.

In terms of trustees' names being in the public domain, it was determined that communication on the part of OSCR would again be key in conveying what would be needed to the sector. Furthermore, it was stressed that charities and trustees will need to have assurance that the dispensation mechanism is effective.

One example given of where there could be a concern was if a well-known figure and trustee of an organisation that provides grants/funding to individuals or community groups, was "bombarded by letters" directly rather than going through the charity. It was noted, however, that unless someone's safety was at risk then there would be no real reason for them to remain anonymous.

Regarding disqualification of trustees, it was stated that this was analogous to the disqualification of directors, as the responsibilities of trustees are as important, if not more so, than that of directors.

Q3. Will additional administrative burden be placed on charities?

Some participants highlighted charities were already subject to a lot of regulation, such as those relating to GDPR and safeguarding. Also, that the charity sector was not homogeneous, for example some organisations are volunteer led and so changes may create an extra burden as they may not have access to advisers. Consideration should be given to a phased roll-out to give more time for smaller charities to make changes.

Participants felt that if charities have all the information and guidance they need then starting new charities should not be an issue. They also agreed that extension of the list of offences for which an individual could be disqualified from being a trustee was a sensible approach.

There was some discussion around the skills and expertise that those with lived experience can bring to trusteeship. It was therefore felt that disqualification related to bankruptcy needed to be examined regarding its impact on the ability of charities to bring in those with experience relevant to its work. It was noted that it may be the case that individuals who have experienced bankruptcy might bring valuable lived experience to a charity, so this should not always preclude them from being a trustee of a charity.

(A representative from the Scottish Parliament's Information Centre subsequently clarified that bankruptcy is already a reason for trustee disqualification and is not a new reason for disqualification introduced by the Bill.)

Participants commented that a regulatory climate that makes it harder to recruit trustees should be avoided. For example, some charities were set up to help rehabilitate offenders. One participant was concerned additional regulation might impact on ex-offenders keeping their jobs.

It was pointed out that, while OSCR has some information on how to apply for a waiver, it is insufficient and more information and guidance would be welcomed.

On the whole improved regulatory power for OSCR was supported.

Q4. Do you have any other comments or concerns about specific sections of the Bill, or about the Bill more generally?

The scrutiny of accounts was seen as fundamental to transparency and it was said that if charities are neglecting this then the removal of charitable status would be appropriate.

Support for smaller charities in navigating the new regulations was a key theme in the discussion of this question. OSCR's role in terms of providing support, minimising duplication and providing digital solutions to register maintenance was therefore seen as important. It was noted that this would be especially vital for those working in smaller charities, given that just over half are small organisations with annual incomes of less than £25,000.

Participants said that charities need to be given a reasonable amount of time to comply with regulations, and that work should be undertaken to help them meet their responsibilities. Participants said there may be a lack of awareness and knowledge of what is required if information is not passed on effectively.

It was thought that as long as the processes in place are digital, there should be no extra costs associated with this.

In terms of the instances in which OSCR could give positive directions, it was felt that more clarity is needed. The general principle was supported but more detail was sought around whether the powers would be specific or wide-ranging. Participants also highlighted that care needs to be taken to ensure that directions are not open-ended. The expectation is that the use of positive directions would be reasonable, however, communication from OSCR is needed around what this would look like, especially as it was noted that examples of when positive directions might be used is quite narrow.

There was a call to include lifetime gifts in addition to legacies in the provisions relating to mergers.

Provisions in the Bill related to a connection to Scotland were also welcomed as it was noted that previously simply appearing on OSCR's register could be used as proof of charitable status without any actual connection to Scotland.

Greater clarity was sought on how the appointment of interim trustees would work in practice. It was considered that charities have a better idea of what attributes an interim trustee would need. This was a particular issue as it appeared there was no appeal mechanism in the Bill available to the charity should an interim trustee not be a good fit.

Nuanced communication would be needed to make smaller and larger charities aware of the proposed legislative changes, emphasising it is about "tidying up the ragged edges".

Concerns were raised about OSCR's capacity to support smaller charities if its workload increased but it was not adequately resourced.

Rules around auditing of charities should be reviewed as smaller charities who meet the threshold requirements may find it difficult to pay audit fees. The audit threshold is £500,000, though the comparable UK threshold is £1 million. Also, audits can be resource intensive for smaller and medium sized charities. Anecdotally there is a lack of availability of auditors. It was suggested that changes to the threshold could be made in advance of a review through secondary legislation.

Q5. The Government is committed to carrying out a wider review of charity law after the passage of this legislation. What are your views on a review?

Participants welcomed the Scottish Government's commitment to a wider review, and were keen to see something that is broad, wide-reaching and goes beyond the technical aspects of the Charities and Trustee Investment (Scotland) Act 2005. It was noted that post-legislative scrutiny of the 2005 Act had not taken place.

Participants also noted that there is a wide range of legislation impacting on the sector and the combined impact of this needs to be considered.

It was added that it is important the review is independent of Government, engages with the whole sector and ensures the interests of smaller charities and those representing marginalised groups are considered. Also suggested it is an opportunity to look at the various models of charities, such as commercial trading, social enterprises, research etc and associated rules. Participants also stressed that it should not be too prescriptive and is about looking at the sector as a whole, and that there will be a diversity of opinion about how that is done. However, they also added that there are processes that could be modernised without legislative change.

There was a plea that the review should focus on keeping the sector's uniqueness, rather than it becoming a "mini-public sector" whilst retaining accountability – charities are the "life-blood of Scotland".

Regarding trusteeship, concerns around recruitment were again mentioned, and it was determined that an emphasis needs to be placed on trust, accountability and responsibility, especially as many charities have low levels of income.

Partnership and group working were also raised as aspects the review could look at.