

Charities (Regulation and Administration) (Scotland) Bill

[As amended at Stage 2]

Supplementary Financial Memorandum

Introduction

1. As required under Rule 9.7.8B of the Parliament's Standing Orders, this Supplementary Financial Memorandum is published to accompany the Charities (Regulation and Administration) (Scotland) Bill (introduced in the Scottish Parliament on 15 November 2022) as amended at Stage 2.
2. The Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Financial Memorandum published to accompany the Bill as introduced.
3. The purpose of this Supplementary Financial Memorandum is to set out the expected costs associated with the new and amended provisions included in the Bill following the amendments made at Stage 2. This document addresses those amendments with anticipated or potential cost implications. Amendments agreed at Stage 2 which are not covered in this Supplementary Financial Memorandum are considered not to significantly or materially affect the assumptions in the original Financial Memorandum.

Section 12A of the Bill – Endowments

Detail of change

4. A reorganisation scheme is a scheme for variation of a charity's constitution, transfer of a charity's property to another charity, or amalgamation of a charity with another charity – in each instance, where the charity's constitution would not otherwise allow that action to proceed. Reorganisation can be a valuable tool for charities in Scotland. A reorganisation scheme can enable charities to modernise their governance or purposes and to release unused or underused funds for public benefit. If charities want to reorganise, they need to apply to OSCR for approval. However, charities constituted under Royal charter or warrant or an enactment (referred to in this memorandum as "statutory charities") cannot generally use this mechanism. That rule is subject to an exception which applies to an endowment if its governing body is a charity. An endowment is property where the capital has to be preserved; only the income is spent on the fund's charitable purposes.

5. However, the extent of the exception is considered to be somewhat unclear: the provisions in the Charities and Trustee Investment (Scotland) Act 2005 are written for the paradigm case of reorganising a charity so they do not quite make sense when applied only to endowments within charities. In addition, the restriction that the governing body has to be a charity is considered to be unduly restrictive. There have been cases where there was an endowment held by a statutory charity but because the trustees themselves were not also a charity, it did not qualify (despite the fact that it would be unusual for the trustees to be a charity).

6. The purpose of the change made to the Bill by the insertion of section 12A is to allow OSCR to reorganise an endowment held by a statutory charity or, where a charity's property consists only of an endowment(s), to reorganise the statutory charity – without the charity needing to obtain a new Royal Charter/Warrant or Private Act of Parliament – regardless of the status of the charity trustees. While this issue only affects a very small number of charities, there has been substantial expense to the charities involved, and consequent use of parliamentary time, putting through private Bills that could have been avoided if the legislation were less ambiguous and less restrictive.

Costs on Scottish Administration

7. Implementation costs are estimated to range from £522 in the low scenario to £638 in the high scenario to update relevant OSCR guidance. The costs include OSCR staff time and web publication costs.

	Year 1 (£)	
	Low	High
Communications and Engagement	522	638
Total	522	638

8. In terms of ongoing costs, statutory charities (like any other charities) would be required to seek OSCR's consent for approval of a reorganisation scheme. The cost of approving a reorganisation scheme will vary depending on the precise details of the scheme that is being proposed and the amount of scrutiny to which it requires to be subjected. As such, it is not possible to estimate with any certainty the costs which will fall upon OSCR as this is expected to vary on a case by case basis.

9. However, due to the complexities currently involved in assessing charities' applications to reorganise under the existing legislation, OSCR must take time and obtain legal advice to determine whether it can accept them. The change made by section 12A of the Bill would provide clarity that is expected to reduce the staff time and legal advice spent on this part of the process. As such, there are expected to be savings in no longer having to grapple with these issues, which will at least partly offset the costs of approving new applications.

10. OSCR estimates that it receives between 1-2 applications a year that fall within the current ambiguous provisions. However, it is possible that some statutory charities have been self-selecting out of making an application under the current regime, on the basis that they consider that they do not meet the current criteria in the legislation (e.g. because the charity trustees are not themselves a charity) or because it is not cost effective for them to have to obtain a new private Act of Parliament etc. As such, it is difficult to know how many statutory charities might wish to take advantage of this change in the law. However, as noted above in paragraph 6, the number of statutory charities is very small in the context of the overall total number of bodies on the Scottish Charity Register (c. 25,000) and not all statutory charities will have (or wish to reorganise) endowments.

Costs on local authorities

11. There are no costs on local authorities expected as a result of this change. Although many local authorities manage historic trusts, to date, many of these funds have been able to reorganise through procedures set out in the Charities and Trustee Investment (Scotland) Act 2005.

12. It is, however, possible that in some cases local authorities may be able to take advantage of these changes where the historic trust is a statutory charity. In the case of the [City of Edinburgh Council \(Leith Links and Surplus Fire Fund\) Bill](#), the promoter was the City of Edinburgh Council. The impediment to using the reorganisation provisions in that case was the fact that the charity trustees were not themselves a charity. A similar case in future would be likely to be able to make use of the adjusted reorganisation provisions. It is therefore possible that the provisions may give rise to savings for local authorities in the same way as for other statutory charities (as set out below).

Costs on other bodies, individuals, businesses or third sector organisations

13. At present, there is uncertainty on the reorganisation of endowments held by statutory charities. For example, a charity may need to seek a private Bill to make the relevant changes, and the costs would vary greatly depending upon the complexity of the Bill. The promoter would need to meet all costs of drafting the Bill, the accompanying documents and the cost of advertising the Bill in the press in order to meet the publicity requirements associated with a private Bill. There will normally be a considerable sum in legal fees paid by the charity to guide it through this process. Additionally, the Parliament may ask the promoter to meet any other costs it thinks fit although, if the Bill concerns a charity, it may waive all or any of those additional costs. The Scottish Government understands that a short private Bill for a charity could cost between £40,000 and £50,000 but that this is not definitive, and costs could vary hugely. If charities did not need to seek a private Bill, it is expected that they would see considerable savings. Charities may still wish to engage external legal advice but, while the cost of this could vary significantly, this is likely to be substantially less than the cost of a Private Bill.

This document relates to the Charities (Regulation and Administration) (Scotland) Bill (SP Bill 20A) as amended at stage 2

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