Justice Committee

Tribunals (Scotland) Bill

Written submission from the Office of the Scottish Charity Regulator

1. Introduction

The Office of the Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (‘the 2005 Act’) as a Non-Ministerial Department (NMD) forming part of the Scottish Administration. OSCR is the registrar and regulator of charities in Scotland. There are currently over 23,500 charities registered in Scotland.

The Committee issued a call for written evidence on the Bill in July 2013 and below is OSCR’s submission. In forming our view we have considered our overall vision, which is for charities you can trust and that provide public benefit, underpinned by the effective delivery of our regulatory role.

2. Written evidence

Appeals against the decisions of OSCR are dealt with in sections 75 to 78 of the Charities and Trustees Investment (Scotland) Act 2005 (‘the 2005 Act’). Section 75 provides that Scottish Ministers must constitute a new body the Scottish Charity Appeal Panel (‘SCAP’). The procedural rules of SCAP are detailed in The Scottish Charity Appeals Panel Rules 2006.

Appeals to SCAP are now on the increase. In 2012-13 three SCAP appeals commenced and, to date, in 2013-14 one appeal has so far commenced.

In these appeals three are being pursued by party litigants. The other is a complex Equality matter in which Counsel have been instructed for both the appellant and OSCR. To date no SCAP decision has been appealed to the Court of Session.

SCAP is intended to provide a simple way for charities and trustees to appeal against decisions made about them by OSCR.

In terms of the 2005 Act points of law, fact or administrative process may be appealed to SCAP. In terms of section 76 of the 2005 Act SCAP may confirm a decision appealed to it, quash the decision or remit the decision back to OSCR for reconsideration. A decision of SCAP may be appealed to the Court of Session by the person who appealed to SCAP or OSCR. In terms of the 2005 Act, an appeal to the Court of Session is not restricted to points of law only.

OSCR is supportive of the two tier tribunal system proposed in the Tribunals (Scotland) Bill. If the number of SCAP appeals continue to increase it would be of benefit if SCAP was transferred into a chamber, the appeal process standardised and the available pool of panel members increased. The ability of the First-tier tribunal to have members assigned from the court judiciary in very complex legal matters will be of benefit. OSCR is pleased that there will be the opportunity for
existing Panel members, with their knowledge and experience, to be transferred into the chamber where charity appeals will be dealt with.

On the basis of the nature of appeals to SCAP to date OSCR is of the view that going forward there may be very few appeals made against a decision of the First-tier tribunal. Even so, the availability, in the first instance, of an appeal to an Upper Tribunal on a point of law as opposed to directly to the Court of Session would be welcomed by OSCR. It would make the appeal process more accessible to charities and their trustees.

There would, of course, require to be an amendment to The Scottish Charity Appeals Panel Rules 2006 once the transfer in had taken place. When looking at the provisions of the 2005 Act OSCR does think it would be of benefit if the basis of appeal from SCAP/the First-tier was amended to limit this to points of law only. This would reflect the Tribunal(Scotland) Bill and avoid two potential routes for appeals being created (ie the exiting route direct to the Court of Session on issues of fact, and the new route on points of law as provided in the Tribunals (Scotland) Bill).

3. Overall

OSCR welcomes the opportunity to give a view on the development of this Bill, and hopes the Committee find it useful.

Office of the Scottish Charity Regulator
2 August 2013