

## Social Justice and Social Security Committee

### The Charities (Regulation and Administration) (Scotland) Bill

#### Summary of written evidence

#### Background

The Social Justice and Social Security Committee issued a [written call for evidence](#) on the Bill which ran from 8 December 2022 to 3 February 2023.

Respondents could share their views in two ways –

- A detailed consultation, comprised of ten long-form questions
- A short survey

The short survey was intended to capture the views from smaller organisations who may not have had the time or resources available to respond to the more detailed consultation.

There were 55 responses to the short survey. These were comprised mainly of individuals responding on behalf of smaller charity organisations, or individuals who act as a trustee on various charities within the sector.

There were 33 responses to the detailed consultation, with 30 from organisations and 3 from individual members of the public.

#### Detailed consultation

##### Question 1 – What are your views on the Scottish Government’s consultation and engagement process leading to the Bill?

There were 26 responses to this question. Views on the effectiveness of the Scottish Government’s consultation and engagement process were mixed.

Most, however, were aware of both 2019 and 2021 consultations. Most also recognised the delay to further engagement and publication caused by the COVID-

19 pandemic – with one respondent highlighting these delays have resulted in “a less consistent approach to the drafting and introduction of the Bill.”

Some respondents were satisfied with the level of consultation and engagement at this stage, with one stating:

“The Scottish Government’s consultation and engagement process leading to the Bill has been carried out with clarity and sufficient depth and is to be welcomed.” - **South Lanarkshire Council**

This is reflected by other respondents who described the process in varying terms from “thorough” to “adequate”. Most also welcomed the opportunity for further engagement following the 2019 consultation.

However, these views were not universally reflected. **Scottish Women’s Convention (SWC)** stated that the process has not been wide-reaching, highlighting concerns that not all third-sector organisations have had an opportunity to present their concerns or feedback. They therefore called for further guidance presented alongside the Bill to ensure wide-spread awareness.

This is echoed by **Zero Tolerance Scotland** and **Edinburgh Rape Crisis Centre**, who both stated that:

“We know with hindsight that there were consultations on the proposals in 2019 and 2021. However, we did not have the capacity to contribute to them and this current consultation has not been well advertised.”

**CHAS** also stated the engagement process could have been wider and would have “welcomed broader publicity around...engagement events”.

They also highlighted that despite renewed engagement efforts, the accompanying policy documents suggest only a small fraction of the over 25,000 charities in Scotland engaged in the initial consultation process. Concern as to the extent to which smaller third sector organisations were engaged in the process was a common theme in most submissions by smaller charities.

There was also confusion expressed by some respondents regarding the questions asked during the consultation process. Most who expressed frustration with this aspect highlighted that the questions asked were lacking in detail or asked stakeholders to respond to complex issues without providing necessary background information.

Some respondents also questioned the focus on aligning Scottish charity law with England and Wales without a rationale or further explanation given for this.

## **Question 2 – How has the charity sector changed since 2005, and why is an update or strengthening of legislation needed?**

There were 28 responses to this question. The majority of respondents recognised that the charity sector has changed significantly since 2005, and so proposals to update the legislation were welcomed.

Some highlighted that the sector has grown significantly since 2005, and public expectations on charities have changed. In particular, organisations funded by local and national government agencies are subject to “more checks and balances than ever before”.

As **Turcan Connell** highlighted, with charities being held to a higher standard than previously, it is important for the legislation to be updated to ensure that OSCR, as a regulator, has all necessary powers to manage and regulate those in the sector.

There was also a common theme among respondents that greater transparency and accountability is needed to maintain the public’s trust in the sector. Many cited the COVID-19 pandemic and its impact on the sector as underlining this need for greater transparency, as well as the need for wider reform given the “seismic” changes which happened in response to the challenges posed by the pandemic. Some respondents stated they believe the past 3 years following COVID-19 have seen more change in the sector than ever before since 2005.

**Aberdeen Council of Voluntary Organisations (ACVO)** and **SCVO** referenced research conducted by Volunteer Scotland, which looked at how charities adopted new and innovative delivery models in response to COVID-19. It also looked at new ways in which charities generated income. Their research found:

“A crisis of the scale and complexity of COVID-19 required decisive and prompt action across areas such as information, guidance, support, services, innovation and funding to facilitate the response by the third sector and volunteering.”

According to ACVO and SCVO, this had a major impact on the way charities operate in the sector at an organisational level, meaning that changes to existing legislation is necessary in order for OSCR to keep pace with the changing charity sector landscape. This was echoed by the majority of respondents.

Respondents also highlighted the impact these challenges have had on trustees. Many respondents reported trustees feeling fatigued, which was compounded by the subsequent cost of living crisis adding additional challenges to their own paid employment – which, in many cases reported, resulted in a conflict with their voluntary trustee responsibilities.

They state there also appears to be an increased feeling of apathy amongst trustees, with reports finding many practical barriers to volunteer engagement remain; such as the need to work longer hours, worsening mental health and wellbeing of volunteers, and a pervading sense of a ‘perma-crisis’ gripping society.

This has led to difficulties for charities recruiting volunteers and trustees. This was echoed by a number of respondents, with figures showing an increase of 12 percentage points in the proportion of charities reporting recruitment issues from 17% in 2016 to 29% in 2020.

The **Faculty of Advocates** submitted that the 2005 legal landscape for charities has long been complex and has only grown more so. This presents difficulties, particularly for smaller charities, in keeping up with the law and requires rigorous oversight from

OSCR. They also identified three themes of concern present amongst trustees which often make informed persons reluctant to become, or even continue, as charity trustees. These being -

- Demands upon charity trustees
- Potential personal liabilities of charity trustees
- The complexity of the legal environment

Given these challenges, respondents see an update to existing charity law as necessary to increase transparency and provide further clarity for existing and prospective trustees.

However, respondents also highlighted that it is vital any new legislation regarding charity governance did not present any additional barriers to trustees, particularly given their status as volunteers. Some concern from respondents was raised with regards to the creation of an open, public searchable register of charity trustees. Some stated they believe this may be unattractive for prospective trustees.

While this concern was recognised by many, there was overall support amongst respondents for the creation of such a register – particularly given the increased annual turnover of the charity sector in recent years, the lack of transparency since the introduction of Scottish Charitable Incorporated Organisations (SCIOs) in 2011, and a belief that transparency should go hand in hand with the benefits of attaining charitable status. Some also highlighted that increased transparency will enable diversity monitoring of charity trustees and help to highlight risks related to limited diversity in larger organisations.

Some respondents also addressed the need for Scottish charity law to align with that of the Charity Commission for England and Wales and Companies, as it would mean reconfirming those in control of certain organisations, with the **David Hume Institute** stating:

“The choice of what information is in the public domain should not depend on the charity’s commitment to openness and transparency.”

There was therefore overall support for increased transparency and proposals in the Bill to strengthen OSCR’s regulatory powers – particularly through the maintenance of a register of trustees and charitable accounts.

**Question 3 – 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?**

There were 30 responses to this question.

The vast majority of respondents stated they would welcome a wider review of charity law after passage of the Bill.

There were some differing views as to what this review should look like, however, as well as how the Scottish Government should engage with the third sector in any further review.

Many organisations, such as **SWC, Zero Tolerance,** and **Edinburgh Rape Crisis Centre** echoed the submission and sentiments from **SCVO** that a more detailed review of the future of charity regulation in Scotland is needed.

SCVO highlighted that when the Scottish Government first launched its original consultation on the Bill proposals, many in the sector felt the proposals did not go far enough. They state there is support across the voluntary sector for an independent review of the regulatory landscape – with charities playing an integral role in this process.

They state it is important for further reviews to look at how legislation and other forms of non-legislative regulatory interventions can support charities. SCVO point out that the sector is not solely regulated by the 2005 Act, as a variety of different regulators, duties and obligations are in effect (such as freedom of information legislation). It is therefore important to take a holistic approach to regulating the voluntary sector and assessing how regulatory frameworks can be updated in a wider review.

Many religious organisations who submitted evidence stated a wider, more detailed review is “long overdue”, including the **United Reformed Church,** the **Scottish Episcopal Church,** the **Catholic Bishops’ Conference of Scotland,** the **Church of Scotland** and the **Methodist Church in Scotland.**

The common theme amongst these organisations was that the law has not been significantly amended since the 2005 Act came into force, and therefore in order to protect the “charity brand” the public must have confidence the sector is being regulated appropriately, and that the regulator has the power to take action when necessary.

They state there are also areas where more clarity would be helpful – such as definition of public benefit and the notifiable event process. They also state that consideration should be given to streamlining the process to enable charities to make minor changes more easily.

The **Scottish Land Commission** stated they would welcome more scrutiny of charitable status as applying to public sector actors, particularly ALEOs. They state they would also welcome 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.

While **Volunteer Scotland** state they welcome the improvement in clarity for trustees regarding their roles and responsibilities in the Bill, they state proposals do not go far enough and that a wider review will help “address the pervasive lack of diversity amongst charity trustees”.

They cite figures from the Scottish Household Survey in 2018 which showed only 13% of formal volunteers aged 16-34 acted as a committee member or trustee, compared to 36% aged over 60. They also state that recent provision taken by Who Cares? Scotland to ensure at least five of their board members are care experienced

presents a model that could be duplicated across the charities sector, ensuring charity boards reflect the communities that these charities serve.

Others, while welcoming the commitment to a wider review, said the review should be carried out sooner rather than later – with some calling for it to be carried out during this parliamentary term.

#### **Question 4 – What are your views on the Bill’s Financial Memorandum and the various impact assessments published by the Scottish Government?**

There were 27 responses to this question.

Responses regarding the Financial Memorandum and various impact assessments were mixed – with some stating they had no view or comments.

Others who responded were overall positive, but some asked for further clarity regarding what costs were expected to be passed on to charities.

**Zero Tolerance** and **Edinburgh Rape Crisis Centre** asked for further clarification for Sections 4-6 regarding updating criteria for the automatic disqualification of charity trustees and extending it to individuals with senior management positions in charities. They note the impact assessments state that a charity has fed back that extra costs will be incurred due to the need to review recruitment processes and pre-employment checks, further stating:

“There is a lack of clarity as to what due diligence means in these processes when OSCR will not be keeping a record of senior managers in the same way they will be monitoring trustees. This ambiguity could mean charities spend more on DBS [Disclosure and Barring Service] and PVG [Protecting Vulnerable Groups] checks when they may not be needed. Zero Tolerance (and ERCC) urges the Scottish Government to clarify this point so a meaningful costs analysis can be undertaken by charities.”

Some concerns were raised by **Aberdeen City Council**, who highlighted the financial memorandum has been prepared on the assumption that there will be no cost to Local Authorities as Local Authorities will be able to pass all administrative costs to charities. They state this fails to recognise several charities supported by the Local Authority (either through administrative support or its role as ex-officio trustee) have limited resources. Therefore, they state they will not be able to pass on administrative costs and will need to absorb these to continue to support charities.

**Turcan Connell** stated that the impact on charities will not be significant and the associated costs of implementing the Bill do not appear to be extensive. This is echoed by other respondents, with some mention being made as to the budget allocated to a national campaign to communicate changes, which **AVA** state is “unrealistically low” given the number of organisations affected.

Some gave their support regarding increased costs for OSCR to carry out its regulatory duties with enhanced powers, with **Alzheimer Scotland** stating they:

“Support an appropriate increase in funding to enable OSCR to carry out its duties and responsibilities effectively.”

### **Question 5 – Will the Bill lead to the Scottish public being better protected, and will charity regulation become more transparent?**

There were 27 responses to this question.

The vast majority of respondents agreed that the Bill will lead to greater transparency in charity regulation.

However, some also highlighted that the proposals will only be effective in increasing transparency and protecting the Scottish public if OSCR is appropriately resourced and able to harness its new powers accordingly.

Many recognised that increasing OSCR’s powers to investigate current and former charities, as well as broader coverage of the right to disqualify trustees, will have a positive impact on protecting the public.

There was a general theme among respondents that strengthening OSCR’s powers will act as a deterrent against maladministration, offering assurances to the general public about management of funds.

A number of respondents also identified the creation of a publicly searchable record of trustees would increase transparency and protect the public against “rogue trustees” who previously would be able to avoid scrutiny.

Some respondents, however, identified that the creation of a register of trustees may impact recruitment of trustees in the future. As highlighted by the **Faculty of Advocates**, many charities struggle to recruit charity trustees with the pre-requisite skills, with the majority of positions being voluntary but still holding great responsibility.

While it was recognised that trustees will be able to apply to OSCR to preserve their anonymity (to the public, not OSCR) and that an appeals process will be implemented – the Faculty state a person may still be put off by the uncertainty surround such a process. Therefore, they state:

“If there is to be a public register of charity trustees, care must be taken over the exemption procedure and reviews pertaining thereto.”

The Faculty did say, however, that broadly speaking they consider that the Bill will lead to charity regulation being more transparent and the public being better protected than at present.

Again, while organisations agreed the Bill would lead to greater transparency and protections, some sought further clarity. **CHAS** stated it would welcome clarification that charities will not be required to provide historic information in relation to past trustees – which may lead to an administrative burden and act as a deterrent for individuals who are no longer trustees, but still involved in another charity as a trustee.

Similarly, **SWC** agreed that the proposals around trustees would make regulation and management more transparent, as well as proposals surrounding charitable accounts. However, they did raise concerns regarding trustee protection and safety, particularly those who work directly with domestic violence and prostitution who are survivors themselves, stating:

“By putting their information on public record, they could be open to further abuse and furthermore, this may be off-putting for those with vital lived experience to enter the charitable sector.”

It should be noted, and as previously highlighted, there are measures within the Bill aimed at protecting trustee anonymity in appropriate circumstances.

### **Question 6 – What are your views on the extent to which the Bill matches OSCR’s original proposals, as set out in 2018?**

There were 24 responses to this question.

Again, there was broad agreement from respondents that the Bill matches OSCR’s original 2018 proposals.

**Citizens Advice Scotland** went further to say that the Bill is an improvement on the original 2018 proposals. This is due to the addition of ensuring that de-registered charity assets will continue to be used for public benefit, as well as the proposal of the creation of a record of charity mergers.

**CHAS** however, while acknowledging the Bill broadly mirrors original proposals, notes that the themes in the original OSCR paper do not reflect exactly the proposals noted in the Government’s policy memo. CHAS also noted that additional provisions, identified by Citizens Advice above, have been added. However, they believe these measures to be “entirely prudent, practical and sensible”.

Some did highlight concerns. **Carnegie UK** note that the absence of provisions proposed for modernising charities established under royal charter is a gap. The **Charity Law and Policy Unit at the University of Liverpool** also noted the initial consultation contained potential for broader reform, stating:

“In the first consultation, for example, there were provisions around clarification around the legislation to make clear that OSCR can approve re-organisation schemes for certain charities that have been established by Royal charter, warrant or enactment. These proposals do not appear in the Bill.

In sum, the proposals within the Bill are modest by reference to what could have been done at this point.”

Others stated that while they agree the Bill appears to match OSCR’s proposals, OSCR themselves would be best placed to comment on this.

## **Question 7 – Do you think the Bill makes it easier or more difficult to start and run a charity?**

There were 27 responses to this question.

Views on this question were mixed. Many identified that the Bill would make it easier to run a charity due to increased clarity it will bring to charity regulation in Scotland. This was reflected by others who stated that the actual process for establishing a charity will not change significantly, but charities will now be more aware of their obligations and the consequences of non-compliance given additional powers granted to OSCR.

The **Charity Law Association** stated they do not consider the process of starting a charity will be affected by the Bill.

Some stated that certain proposals may create additional administrative burdens on charities, particularly smaller organisations. **CHAS** suggest the Committee inquire with smaller charities, particularly ones who have not responded directly to the consultation, as to whether these would cause an administrative burden.

Others also highlighted some concerns regarding recruitment and pre-employment checks for trustees, with **ERCC** again highlighting a lack of clarity on what “due diligence” means in these situations.

This is similarly reflected in other submissions regarding the appointment of ex-offenders to act on a charitable board, which may cause “a significant regulatory headache, with the potential to increase bureaucracy.”

**Turcan Connell** recognised that the introduction of a charity trustee register may lead to arguments of increased administration for charities, but they view this as necessary to promote good practice by encouraging charities to ensure that their own formal appointment processes are followed.

## **Question 8 – Will additional administrative burden be placed on charities? Would this be disproportionate for smaller charities?**

There were 28 responses to this question.

Views regarding whether there would be additional administrative burdens on charities were mixed. While regard was had that burdens would be greater on smaller charities than larger ones, most agreed that any changes could be addressed or would be insignificant.

**The Charity Law Association** stated that:

“While charities will have to shoulder some administrative burden in keeping OSCR advised of changes to charity trustees under the Bill, we do not consider that this represents a particular difficulty and the administrative burden will be light, particularly for charities already bound by law to maintain their own registers (e.g charitable companies and SCIOs).”

As has been noted in previous sections, some organisations highlighted their concerns around additional administration in their answers to previous questions in the Call for Views – for example, Aberdeen City Council’s response to question 4.

The various religious organisations who submitted a response agreed that there would be additional administrative burdens, with the **United Reformed Church** stating:

“Each United Reformed Church in Scotland supported by the Synod of Scotland is a separately registered charity relying on volunteers to administer the church. Additional reporting requirements will increase the burden on these churches.”

**ICAS** highlighted in their response, as well as in response to other questions, that trustees of smaller charities might feel daunted about the implementation of a register of trustees both in terms of complying with the requirements and securing disclosure exemptions on grounds of safety and security. However, they also state these concerns could be addressed by OSCR supporting charities through the implementation process and informing the sector well in advance of changes.

**The Law Society of Scotland** believed that while some of the changes may create additional administrative burdens, they echoed the sentiments of ICAS that this will depend on the detail of implementation. They were the only respondent to raise that consideration should be given to ensuring those who may not have access to the internet, or confident using online processes, are not excluded.

As highlighted, however, most respondents believe the additional administrative burden will be small, if not insignificant in most cases. **South Lanarkshire Council** stated:

“There will be an increase in the administration required, but it is not considered this will be significant. The increase in administration is at a level of insignificance that no disproportionality should be apparent.”

**Foundation Scotland** stated that some of the requirements around a register of trustees may require additional administration, they further state:

“We anticipate the benefit of publishing Trustee names outweighs any perceived additional administrative burden to individual charities but acknowledge it may feel disproportionate for smaller charities.”

They also noted that the Financial Memorandum states there is an expectation to tie this process into the Annual Return submission, and they hope that an efficient digital platform is created to facilitate this and improve efficiency.

### **Question 9 - Does the Bill bring the Scottish regulatory system into line with other parts of the UK? Why is this important?**

There were 26 responses to this question.

Some organisations felt they were not placed to offer a response to this, as they work only in Scotland. However, those who did comment, generally agreed the Bill would bring Scotland in line with other parts of the UK.

**SWC** stated that the Bill would bring Scotland in line with other parts of the UK, particularly regarding the regulation of trustees, charity mergers and charity naming. It would also “close certain loopholes”. They further state the changes are important, as aligning with the rest of the UK provides further clarity for charities.

**Citizens Advice Scotland** welcomed measures aimed to bring the Scottish regulatory system in line with the rest of the UK. They state consistency in legislation is particularly important with regards to updates on the criteria for disqualified trustees, as it ensures those who are disqualified in England and Wales would not be able to hold a trustee post in Scotland.

**The Law Society of Scotland** submitted a lengthy response to this question, highlighting that the system in England and Wales is much longer established, more complex, and designed to regulate much larger charities sector. For example, the definitions and registration exemptions around ‘small’ charities with an income of less than £5,000 is different, as well as some features of the England and Wales system having no Scottish equivalents such as “the Official Custodian”.

However, they further state that bringing the Scottish system “fully into line” with England and Wales is not the purpose of the Bill, nor should it be. Instead, they state:

“What is important is not that the two systems should be fully aligned in the sense of one being a version of the other, but that each jurisdiction should regulate its charities appropriately for the size and make-up of its own charities sector.”

They note that comparison with England and Wales has helped to highlight shortcomings in the regulatory framework for Scotland, and that these have now been addressed in the Bill to a degree. For example, Sections 4-7 of the Bill around new provisions on disqualification in Scotland is one area identified which will align the two systems more closely. Also, the Bill’s provisions granting OSCR power to oversee the use of “working” and “official” charity names is similar to new powers granted to the Charity Commission under the Charities Act 2022; which the Law Society identify as ‘sensible’ as the use of working names has become increasingly common in Scotland as it is in England and Wales.

There are also areas identified which remain distinct to Scotland. For example, sections 11 and 15 of the Bill confer new powers of enforcement on OSCR, particularly to deregister a charity for failure to submit accounts – of which there is no equivalent in England and Wales. However, they further note that the options for intervention by OSCR remain weaker compared to the powers recently conferred to the Charity Commission under the Charities Act 2011.

The Law Society summarised their response to this question by stating:

“Overall, therefore, whilst the Bill does not fully bring the Scottish regulatory system into line with other parts of the UK, it creates alignment in many important respects.”

**The Land Commission** also welcomed the aim of the Bill to bring Scotland more in line with the rest of the UK, but highlighted some areas remain distinct to Scotland, stating:

“...the Scottish charity framework should reflect the developing Scottish land reform agenda, and in particular the Land Rights and Responsibilities Statement, to which there is sadly no equivalent in England and Wales. Whilst most landowning charities operating in Scotland are registered in Scotland...there are significant landholdings in Scotland owned by Church Commissioners, a charity registered only in England and Wales.

We consider that all charities operating in Scotland, whether registered here or not, should be subject to the same high expectations of land stewardship and involvement in local communities.”

**Turcan Connell**, however, were critical of how effectively the Bill brings Scotland into line with other parts of the UK.

While recognising the introduction of a register of trustees and improved powers for OSCR is an improvement on the Scottish position, they believe other areas still need to be improved upon. For example, allowing charities that have been created by an Act of Parliament or Royal Charter to apply for a reorganisation scheme through OSCR.

They state as the Bill currently stands, a simple amendment to a constitution may be a lengthy and expensive process. Also, while recognising provisions relating to legacies will improve the Scottish position, the Bill does not extend to lifetime gifts while the model in England and Wales covers all gifts, not just legacies.

### **Question 10 – Do you have any other comments or concerns about specific sections of the Bill, or about the Bill more generally?**

There were 27 responses to this question.

Respondents' views and comments were varied. While there was a general theme that the Bill will help improve transparency and strengthen the regulator's current powers, some highlighted areas which they would like to see pursued in future or where perceived 'gaps' in the legislation exist.

Many also called for further guidance to be provided by OSCR in anticipation of any changes, particularly to aid smaller charities with any potential administrative burdens.

A common concern raised was that OSCR must be properly funded to ensure the new measures do not create disproportionate additional burdens and are able to carry out their increase regulatory role effectively.

**The Charity Law and Policy Unit** noted that OSCR must ensure their computer systems and new databases are secure from external threats. They also state that, in line with the values of a more diverse sector, OSCR could seek to collect additional demographic data about charity trustees – which could then be used in future research and assist in diversifying trustee boards. They also state an important and valuable change would be making it easier for small unincorporated charities to more easily convert to a SCIO. They would also welcome further guidance from OSCR on the “connection to Scotland” test, as this could create a degree of uncertainty for charities seeking to operate in Scotland.

**Bord na Gaidhlig** stated that, given the number of Gaelic-related charities in Scotland, OSCR may wish to consider the adoption of their own Gaelic Language Plan.

Some respondents, such as **Alzheimer Scotland, Zero Tolerance, and The Robertson Trust**, raised some concerns regarding the register of trustees, the publishing of trustee names, and maintenance of the OSCR database.

Both Zero Tolerance and Robertson Trust raised some concerns regarding where an individual being included on the list could jeopardise their own safety, such as survivors of domestic abuse or trafficking. Given the aim to create more diverse charity boards, they state consideration should be given about how to make the process for exemptions clear and fully consistent on a case-by-case basis. The Robertson Trust also propose the database be fully digital and searchable, like that in use for Companies House.

**Alzheimer Scotland** also raised some concerns around the collection and sharing of data. They state the language of the Bill is ambiguous around data gathering and its use in relation to the delivery of its function. It does not, they say, state clearly the level of detail it seeks to obtain from the sector. They believe OSCR should gather the minimum amount of data to enable it to carry out its operations, and information on retention should be set out clearly (though they make the point to say this is a separate issue to the retention and publication of information regarding disqualified trustees. They further state:

“Alzheimer Scotland also have genuinely-held concerns about future intentions around data collected by OSCR. Alzheimer Scotland seeks clarification on the use and scope of data requested and held by OSCR, and any provision under which additional information can be obtained. The Bill indicates OSCR’s intention to publish only the names of trustees in the public domain, but clear provision must be set out in the legislation around any further potential circumstances under which a third party, individual, or organisation would be able to access any other personal or contact information held by OSCR.”

**CHAS** stated they would welcome reassurance on the following 3 points:

- i) That initial implementation and/or ongoing operational costs will not be passed to charities.
- ii) Detailed guidance is developed by OSCR in relation to implementation on ongoing operational requirements of the provisions.

- iii) Any additional measures and powers bestowed on OSCR will be implemented in a proportionate and measured manner.

**ICAS** included their response to the March 2019 consultation in this section – highlighting concerns regarding asset transfer schemes and regulations around winding up, insolvency, or dissolution of a SCIO. They also raised additional concerns around audit threshold in the Charities Accounts (Scotland) Regulations 2006. They state that the gap between the audit threshold for Scottish charities in the 2006 Regulations and the Companies Act 2006 is now considerable, making it difficult for audit registered firms to offer audit services to charities for a fee that makes charity audits financially viable for firms and affordable to charities.

**The Institute of Legacy Management** made comments specifically regarding Clause 12 on charity mergers. They welcomed the introduction of a register of mergers in Scotland and felt that this is a positive move to bring Scotland in line with the rest of the UK, where it is currently lagging behind. However, they raised the question of what will happen if a transferee does not give OSCR notice of a merger, stating it may be useful for OSCR to have a power in the Bill to add a merger to the register where it is aware of (and consented to) two or more charities merging.

## Short survey

As mentioned, the separate short survey aimed to capture the views of smaller charities. Shorter and more direct questions were posed and as such less detailed answers were received.

There were 55 responses in total to the short survey. The types of organisations responding varied, with a breakdown shown below -

Type of Respondent	Total Responses	Percentage
<b>Scottish Charitable Incorporated Organisation (SCIO)</b>	30	54.55%
<b>Company</b>	11	20.00%
<b>Other</b>	5	9.09%
<b>Trust</b>	4	7.27%
<b>Association (“unincorporated associations”)</b>	2	3.64%
<b>Designated religious charity</b>	1	1.82%
<b>Established by Royal Charter</b>	1	1.82%
<b>Development Trust</b>	1	1.82%

The “Other” responses represent a former trustee, director and employee of a charity, a SCIO and a Company Limited by guarantee, a third sector interface, a charity consultant, and a statutory corporation.

There were no responses from a social enterprise or organisation established by Royal Warrant.

With regards to how large the organisations the respondents represented are, 24 respondents (44%) stated their charity had 8 or more trustees, while 14 respondents (25%) stated they had 4-6 trustees.

29 respondents (53%) reported having 1-2 “senior officeholders”, with the next largest number reported by 13 respondents (24%) at 2-4 senior officeholders.

On whether they were aware of the Bill prior to this survey, 31 (56%) reported Yes while 24 (44%) reported No.

Asked whether, before the Bill, they were involved in the Scottish Government’s consultation on changes to charity law – 52 (95%) reported No compared to 3 (5%) reporting Yes.

When asked whether they would have liked to have been involved, 31 respondents said Yes (56%), 22 respondents said No (40%), and 2 respondents did not answer (4%). Asked why their organisation wasn’t involved, 36 respondents (65%) stated they were unaware of the consultation/not approached.

On whether they thought charity law needs to be updated by the Bill, 39 respondents (71%) stated Yes, 4 respondents (7%) stated No, and 12 respondents (22%) stated they did not know.

On whether they Bill would impact their organisation, 32 respondents (58%) said Yes, 10 respondents (18%) stated No and 13 respondents (24%) stated they did not know.

Of those who stated it would impact their organisation, 26 (47%) stated it would impact on administrative time and 6 (11%) stated it would create additional staffing costs. The 13 respondents who answered ‘other’ to this question, many highlighted concerns around the impact a public record of trustees would have – ranging from being a potential barrier to recruiting trustees to concerns around existing trustees resigning as a result of further scrutiny. This was of particular concern to women’s aid charities.

Some recognised the Bill would bring about improvements to transparency within the sector.

On whether more changes should be made to charity law other than those set out in the Bill – 28 respondents (51%) stated they did not know, while 19 respondents (35%) said No, and 8 respondents (14%) said Yes.

Of those who responded Yes, prospective measures for future included -

- “Income level when a full audit is required should be increased to at least £1 million, in line with ROI, which would save smaller charities a lot of resource.”
- “Charities should have to maintain a certain minimum level of financial reserves.”
- “OSCR should have greater powers to investigate and to follow up complaints more thoroughly.”

Finally, asked whether they would like to be involved further in helping the Committee understand the impact of the Bill on their organisation – 24 respondents (44%) stated Yes – informally, 4 respondents (7%) stated Yes – formally, and 27 respondents (49%) stated No.

**Scott Mackay, Researcher, Financial Scrutiny Unit, SPICe Research**  
**20 February 2023**

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area. The Scottish Parliament, Edinburgh, EH99 1SP [www.parliament.scot](http://www.parliament.scot)

## **Annex A: Questions in detailed consultation**

The questions posed in the detailed consultation were as follows:

- What are your views on the Scottish Government's consultation and engagement process leading to the Bill?
- How has the charity sector changed since 2005, and why is an update or strengthening of legislation needed?
- 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?
- What are your views on the Bill's Financial Memorandum and the various impact assessments published by the Scottish Government?
- Will the Bill lead to the Scottish public being better protected, and will charity regulation become more transparent?

- What are your views on the extent to which the Bill matches OSCR's original proposals, as set out in 2018?
- Do you think the Bill makes it easier or more difficult to start and run a charity?
- Will additional administrative burden be placed on charities? Would this be disproportionate for smaller charities?
- Does the Bill bring the Scottish regulatory system into line with other parts of the UK? Why is this important?
- Do you have any other comments or concerns about specific sections of the Bill, or about the Bill more generally?

## **Annex B: Questions in short survey**

The questions posed in the short survey were as follows:

- What type of charity is your organisation?
- How large is your charitable organisation?
- Were you aware of the Charities (Regulation and Administration) Bill prior to answering this survey?
- Before the Bill, were you involved in the Scottish Government's consultation on the changes to charity law?
- If you were not involved in the consultation, would you have liked to be?
- Why wasn't your organisation involved?
- Do you think charity law needs updated by the Bill?
- Will the Bill impact on your organisation?
- Should there be more changes made to charity law other than those already set out in the Bill?
- Would you like to be involved in helping the Committee understand the impact of the Bill on your organisation?