

# **CHARITIES (REGULATION AND ADMINISTRATION) (SCOTLAND) BILL**

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## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.2 of the Parliament’s Standing Orders, this Financial Memorandum is published to accompany the Charities (Regulation and Administration) (Scotland) Bill, introduced in the Scottish Parliament on 15 November 2022.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 20-EN);
  - a Policy Memorandum (SP Bill 20-PM);
  - a Delegated Powers Memorandum (SP Bill 20-DPM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 20-LC).
3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.
4. If passed, the Bill would amend relevant sections of the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”), and provide improved powers for the Office of the Scottish Charity Regulator (“OSCR”) who regulate the approximately 25,400 charities registered in Scotland. The Policy Memorandum explains in detail the background to the Bill and the policy intention behind it. This Financial Memorandum should be read in conjunction with the Bill and the other accompanying documents.
5. This Financial Memorandum examines the cost implications of the Bill, which is largely based on the proposals in the Scottish Government’s 2019 consultation on Scottish charity law<sup>1</sup>. The proposals are not equal in terms of their significance or the financial impact they will have, and the commentary in the Financial Memorandum is tailored accordingly. It is structured on the consultation proposals as follows:

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<sup>1</sup> [Scottish charity law: consultation - gov.scot \(www.gov.scot\)](http://www.gov.scot)

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6. Each part will examine the estimated costs, savings, and changes to revenues to which the provisions of the Bill would give rise for the different sectors involved, including, as appropriate, the Scottish Administration, Local Authorities, other bodies, individuals, businesses and third sector organisations. Each part will set out:

- the best estimates of the administrative, compliance and other costs to which the provisions of the Bill would give rise, as well as likely efficiency savings;
- the best estimates of the timescales over which the costs and savings are expected to arise; and
- an indication of the margins of uncertainty in these estimates.

7. The figures set out in this Financial Memorandum represent the Scottish Government’s best estimates of the costs of the activities affected by the provisions of the Bill. As OSCR is a Non-Ministerial Office and a separate part of the Scottish Administration, the costs to the Scottish Administration have been identified by OSCR in relation to its operations. These figures are not spending commitments and should not be used as a tool for future budgeting, as costs may be affected by other factors in addition to the changes made by the Bill. Funding for OSCR will be negotiated in the usual way, taking into account the projected costs of its functions at the time.

## **BACKGROUND**

8. The 2005 Act reformed the regulatory regime for charities in order to support the charity sector and to safeguard the public interest in relation to charities. One of OSCR’s statutory functions is to give advice to Scottish Ministers, as and when appropriate, on matters relating to OSCR’s functions. Corresponding legislation in England and Wales, and Northern Ireland, has each been updated several times since the 2005 Act was passed, and it is recognised that Scottish legislation is overdue for review.

9. The Bill is based on practical proposals put forward by OSCR to strengthen and update the current legislative framework for charities, as set out in the 2005 Act, by:

- Increasing transparency and accountability in charities;
- 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.

## **SUMMARY OF TOTAL COSTS OF THE BILL**

10. The following table sets out best estimates of the costs of the activities affected by the provisions of the Bill over the course of the first three years from commencement. This includes both initial implementation costs as well as any ongoing annual costs. All costs are resource costs.

\*Figures in red and in brackets represent a saving.

<b>Provision</b>	<b>Year 1 total costs (£)</b>	<b>Year 2 total costs (£)</b>	<b>Year 3 total costs (£)</b>	<b>Total (£)</b>
Publishing accounts (section 9)	9,217 – 18,603	(8,893) – (3,531)	(10,369) – (5,335)	<b>(10,045) – 9,737</b>
Trustee details (section 2, 3 and 7)	328,034 – 422,725	48,493 – 64,778	47,017 – 62,974	<b>423,544 – 550,477</b>
Trustee disqualification (section 4 to 7)	31,343 – 85,705	11,026 – 60,920	11,026 – 60,920	<b>53,395 – 207,545</b>
Positive directions (section 15)	9,987 – 18,896	3,942 – 10,899	3,548 – 9,809	<b>17,477 – 39,604</b>
Defaulting charity removal (section 11)	20,533 – 29,029	(1,266) – 2,000	(1,138) – 1,799	<b>18,129 – 32,828</b>
Connection to Scotland (section 16)	1,339 – 3,689	63 – 1,335	63 – 1,335	<b>1,465 – 6,359</b>

Inquiries into former trustees (section 13)	15,369 – 49,608	13,176 – 45,803	13,176 – 45,803	<b>41,721 – 141,214</b>
De-registered charities' assets (schedule, paragraph 7)	951 – 1103	0	0	<b>951 – 1,103</b>
Information gathering (section 14)	2,955 – 3,611	0	0	<b>2,955 – 3,611</b>
Register of charity mergers (section 12)	17,592 – 21,776	284 – 581	284 – 581	<b>18,160 – 22,938</b>
Technical amendments (section 8 and schedule)	909 – 1025	0	0	<b>909 – 1,025</b>
<b>Total (£)</b>	<b>438,229 – 655,770</b>	<b>66,825 – 182,785</b>	<b>63,607 – 177,886</b>	<b>568,661 – 1,016,441</b>

11. At present, all implementation costs are included in the year 1 total, with recurring annual costs included in each of the three years as appropriate. This has been done as, at this time, it is not possible to say which years each of the implementation costs will fall into. Though it is unlikely that all changes within the Bill are implemented in year 1 only, it has been done in that way in this Financial Memorandum to provide the highest estimated cost that could be incurred in year 1. If the implementation costs were to be spread across the years it is likely that they will fall into, the low to high costs would be £286,386 to £462,041 in year 1, £212,633 to £369,137 in year 2, and £69,644 to £185,264 in year 3.

12. The Bill is not anticipated to require significant additional activity by charities, other bodies, individuals or businesses and any new costs are considered to be negligible.

13. All costs to the Scottish Administration within the Financial Memorandum have been calculated by OSCR based on its practical casework experience or, where relevant for some new provisions, based on the experience of the Charity Commission for England and Wales (CCEW) which is highlighted as appropriate throughout. All costs have been projected to the 2024/25 financial year to provide the best estimate of likely costs at implementation, and more specifically:

- In line with standard practice of budget forecasting, staff costs have been calculated on the assumption of 3% annual uplifts to actual salary figures for 2021/2022. Most costs within the Financial Memorandum are OSCR's staff costs to implement the provisions of the Bill, carry out communications and engagement activities, provide support to charities and other stakeholders, and process casework. OSCR has, in calculating the projected staff costs, calculated hourly rates for each grade and the number of hours per task.
- Non-staff costs have been calculated using the Office for Budget Responsibility's Gross Domestic Product Deflator (OBR GDP Deflator) – the latest figures available are dated March 2022 and are expected to be subject to significant change due to current inflationary pressure across the economy but these represent the best estimates available at the moment.

14. When sourcing best estimates of costs, OSCR received quotes from IT contractors where appropriate. In addition to using the OBR GDP Deflator to project those costs to the

implementation date, OSCR has followed guidance from the Project Management Institute on industry standard recommendations for IT projects. It recommends contingency costs of 15% (low) and 25% (high) to be added to contractor costs based on overall risk – for example unforeseen technical difficulties, add-ons and adjustments to specifications, or the project overrunning.

15. In relation to VAT, this has only been included in costs where it is not recoverable.

16. As noted in paragraph 9, one of the key purposes of the Bill is to make improvements to OSCR’s enforcement powers. A number of OSCR’s existing powers provide a process for charities to request OSCR to review its decision<sup>2</sup>. The process is generally that, following a review by OSCR, the charity can appeal to the General Regulatory Chamber of the First-tier Tribunal for Scotland<sup>3</sup>. Decisions of the First-tier Tribunal may be appealed by either OSCR or the charity to the Upper-tier Tribunal and potentially to the Court of Session. Some of the proposals made by the Bill would involve changes or additions to OSCR’s powers which in turn provide a review mechanism and appeals process for charities. As such, there could be additional costs to the Scottish Courts and Tribunal Service (SCTS). However, these costs are difficult to estimate given that not every decision reviewed by OSCR will result in an appeal to the Tribunal or the Court, and in cases where there is an appeal some will involve more than one tier of appeal while others will not, meaning that the time involved will depend on each case and the level of appeals.

17. Since the 2005 Act was enacted there have been 12 appeals, relating to 8 individuals or organisations, to the Scottish Charity Appeals Panel<sup>4</sup> or the First-tier Tribunal. As such, the number of cases being appealed are minimal.

18. OSCR has provided details of reviews and appeals that have taken place over the last five years. It confirmed there were 18 requests for review and three of those were appealed to the First-tier Tribunal, two of which were linked and were heard together (the “linked cases”), and this involved two days of hearings, one day for one appeal and one day for the linked cases. The linked cases were appealed to the Upper-tier Tribunal and this involved a one-day hearing. The linked cases were then further appealed to the Inner House of the Court of Session with a one-day hearing.

19. SCTS have noted it is difficult to estimate costs to the Courts and Tribunals but have provided a very rough figure where a lengthy case lasting 10 or 11 days that is appealed to the First-tier Tribunal and the Upper-tier Tribunal could cost up to £30,000, and that this would include any members fee and corporate overhead costs. It is not possible to know how many of OSCR’s future decisions might be appealed, and whether those decisions will be taken under existing powers, or proposed new or amended powers. Therefore, it is not possible to provide a likely cost to the Tribunals and Courts. Though there is a possibility that appeals to the Tribunals and Courts could increase as a result of the Bill, it is not expected to be a significant amount given how low existing figures are.

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<sup>2</sup> [2014-12-22-oscr-inquiry-formal-powers-factsheet.pdf](#)

<sup>3</sup> [Charity appeals \(generalregulatorychamber.scot\)](#)

<sup>4</sup> From 12 January 2018, charity appeals have been determined by the General Regulatory Chamber of the First-tier Tribunal for Scotland.

20. The Scottish Government approached a small representative sample of charities to ascertain estimated costs and savings of the Bill provisions which will directly impact all charities (proposals 1 to 5). Feedback from the charities is reflected in the detailed examination of the proposals below. Overall the charities who fed back did not anticipate incurring anything other than minor costs and were supportive of the proposals set out.

## **A REQUIREMENT ON OSCR TO PUBLISH STATEMENTS OF ACCOUNT FOR ALL CHARITIES IN THE SCOTTISH CHARITY REGISTER (SECTION 9)**

### **Detail of Change**

21. All charities in Scotland are under a legal duty to prepare annual statements of account, and have these independently examined or audited, before submitting the statements to OSCR. There is currently no legal requirement for statements of account to be published on the Scottish Charity Register (“the Register”), although charities are required to supply a copy to anyone who reasonably requests it. This proposal would introduce such a requirement.

22. It is recognised that transparency is an important factor in maintaining public trust and confidence in charities. In publishing annual statements of account, charities have an opportunity to demonstrate the public benefit they provide and showcase their activities. This assists in reassuring members of the public that the money that they may donate is being applied for the charity’s charitable purposes and for public benefit.

23. Charities and charity trustees would be able to apply to OSCR for a dispensation from certain information, such as the name(s) of a charity trustee, being included on the Register where the publication of that information is likely to jeopardise the safety or security of a person or property. A charity/ any charity trustees would have the opportunity to request a review of any decision OSCR makes in relation to the dispensation. This dispensation will carry over to statements of account, with charities not being required to include any information in the statements of account which they have a dispensation for in relation to the Register.

### **Costs on Scottish Administration**

24. It is estimated that one-off implementation costs would range from £18,110 in the low scenario to £22,134 in the high scenario, with £16,634 to £20,330 spent on communications and engagement, and £1,476 to £1,804 spent on the provision of stakeholder support and guidance. Communications and engagement activities would focus on running an extensive communications campaign to inform charities of the change including staff time to design and produce relevant new guidance, generate new content for the OSCR website and social media channels, as well as the design and paying for adverts in relevant third sector publications. Stakeholder support and guidance activities relate to answering queries from charities and other stakeholders and producing new guidance on the changes.

25. To ensure charities have sufficient notice and guidance, OSCR intends to start publishing accounts only after the end of the first full financial year for the charity following commencement of the Bill. A charity can choose any date to be its financial year end date, after which it has nine months to submit its statement of account to OSCR. Taking these points into consideration, the publishing of accounts would be staggered over the first three years after the Bill has commenced

and therefore one-off implementation costs are likely to be spread across this period. It is not yet possible to confirm how costs would be split.

	<b>Years 1-3</b>	
	<b>(£)</b>	
	<b>Low</b>	<b>High</b>
Communications and engagement	16,634	20,330
Stakeholder support and guidance	1,476	1,804
<b>Total</b>	<b>18,110</b>	<b>22,134</b>

26. There are expected to be savings to OSCR as a result of no longer having to undertake the redaction work discussed at paragraph 27 below. Recurring annual costs are estimated to result in savings ranging from £8,893 under the low scenario to £3,531 in years 1 and 2 under the high scenario, with this changing to savings of £10,369 and £5,335 in year 3 (as the number of queries is expected to decline then, as charities become more accustomed to the new rules). Casework is expected to range from savings of £11,845 to £7,662 annually, and the provision of stakeholder support and guidance is estimated to cost between £2,952 and £4,131 in years 1 and 2 before tapering to between £1,476 and £2,327 in year 3 (as the number of queries is expected to decline).

27. At present, OSCR voluntarily publishes the statements of account for charities with an income over £25,000 and for all charities with the legal form of a Scottish Charitable Incorporated Organisation (SCIO). Furthermore, OSCR also provides a link to statements of account where published by another body such as Companies House or the Scottish Housing Regulator. This currently accounts for approximately half of the number of charities on the Register<sup>5</sup>. OSCR currently redacts personal data from all accounts that are directly published on its website, and the casework figures incorporate savings in staff time for no longer doing so (because information will instead be excluded by charities at source where dispensation has been granted under the mechanism discussed at paragraphs 23 and 28).

28. Charities would be able to apply to OSCR for a dispensation from having certain information included on the Register (and by extension their statement of account) and OSCR estimates processing between 10 and 50 dispensations annually on the low and high range. Charities would have the opportunity to review any decision OSCR makes in relation to the dispensation, and OSCR estimates processing between 1 and 5 reviews annually on the low and high range. These figures have been calculated on the basis of the numbers of applications OSCR usually receives each year and the experience of CCEW.

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<sup>5</sup> As at 29 September 2022 there were 25,445 charities on the Register, with OSCR redacting and publishing accounts for 7,833 charities, and providing links to accounts (either from the charity's website or another regulator) for 6,164 charities. The staff time saved through no longer redacting accounts is expected to be around 850 hours annually.

\*Figures in red and in brackets represent a saving.

	Year 1 (£)		Year 2 (£)		Year 3 (£)	
	Low	High	Low	High	Low	High
Casework*	(11,845)	(7,662)	(11,845)	(7,662)	(11,845)	(7,662)
Stakeholder support and guidance	2,952	4,131	2,952	4,131	1,476	2,327
<b>Total*</b>	<b>(8,893)</b>	<b>(3,531)</b>	<b>(8,893)</b>	<b>(3,531)</b>	<b>(10,369)</b>	<b>(5,335)</b>

### **Costs on Local Authorities**

29. Arms-Length External Organisations (ALEOs) are independent charities and therefore any costs associated with them would not fall to local authorities. Many local authorities manage historic trusts and in those circumstances, they already submit their statements of account through OSCR’s ‘OSCR Online’ system, and this would continue in the same manner. Should they apply for a dispensation (or subsequent review of OSCR’s decision), this would involve a small addition to their time in order to complete this process.

### **Costs on Other Bodies, Individuals, Businesses or Third Sector Organisations**

30. Charities already submit their statement of account through OSCR’s ‘OSCR Online’ system, and this would continue in the same manner. Should they apply for a dispensation (or subsequent review of OSCR’s decision), this would involve a small addition to their time in order to complete this process.

## **REQUIREMENTS ON OSCR TO INCLUDE CHARITY TRUSTEE NAMES IN THE SCOTTISH CHARITY REGISTER, TO KEEP AN INTERNAL SCHEDULE OF CHARITY TRUSTEES’ DETAILS AND TO CREATE A PUBLICLY SEARCHABLE RECORD OF REMOVED CHARITY TRUSTEES (SECTIONS 2, 3 AND 7)**

### **Detail of Change**

31. Charity trustees are responsible for governing a charity and directing how it is managed and run. As the persons in charge, it is charity trustees who are ultimately held accountable for the charity’s actions. Accordingly, it is essential that OSCR, as regulator, has up-to-date information on who the charity trustees are and is able to contact trustees quickly where there are concerns in relation to how a charity is run. OSCR currently holds limited information on the over 180,000 charity trustees involved in over 25,000 charities in Scotland.

32. At present, the law only requires the Register to set out the principal office of the charity or the name and address of one of its trustees (where the charity does not have a principal office). To better support effective regulation of charities and their trustees, OSCR would create an internal database of charity trustees which OSCR would use to carry out key functions including inquiries. OSCR would also add charity trustee names to each charity’s entry on the Register, and create a publicly searchable record of individuals that have been removed from being charity

trustees by the Court of Session and therefore are permanently disqualified from acting as a charity trustee (unless OSCR grants them a waiver).

33. Through OSCR's practical experience of regulation, having limited trustee information results in difficulties and delays when carrying out compliance, investigative or engagement work. The internal database would consist of contact details for each charity trustee. This would provide valuable and relevant information to better support effective regulation of charities and their trustees. Each charity's entry on the register would only list the charity trustee's names, and the record of persons removed from office would be searchable by name. Key drivers in public trust are transparency and accountability, and therefore having this information made public would support that. It would also bring information about Scottish charities up to the same standard as is available in other parts of the UK.

34. A charity or any of its trustees would be able to apply to OSCR for a dispensation from the name or names of charity trustees being published on the Register where the publication of that information is likely to jeopardise the safety or security of a person or property. A charity/ any charity trustees would have the opportunity to review any decision OSCR makes in relation to the dispensation.

### **Costs on Scottish Administration**

35. It is estimated that one-off implementation costs would range from £279,541 in the low scenario to £357,947 in the high scenario. The development of the database is estimated to range from £168,137 to £216,599, which would include the design and creation of the database, procurement, legal advice, and relevant software and website development. Project team costs are estimated to be in the range of £92,578 to £118,382, which would include recruiting a 12 month fixed-term Project Manager and wider project team staff costs to test and develop the database. Communications and Engagement costs are estimated to range from £17,350 to £21,162, which would include running an extensive communications campaign to inform charities of the change. This is focused on staff time to design and produce new guidance update existing guidance on the OSCR website and generate new content for the OSCR social media channels, as well as designing and paying for adverts in relevant third sector publications to promote and explain the new changes. The provision of stakeholder support and guidance on the change and process is estimated to be in the range of £1,476 to £1,804, which would relate to staff time for answering queries from charities and other stakeholders.

36. It is expected that charities would submit the names of their trustees while completing their annual return (the online form charities complete each year to provide OSCR with information about the charity, in particular for the Register and including information about the charity's finances) but they would also be able to update the database (OSCR's 'OSCR Online' system) routinely throughout the year, as and when trustee details change. As noted in paragraph 25, charities have different financial year ends and the process for populating the database would take place over a few years. Some implementation costs may be spread between years 1 and 2 but it is not yet possible to confirm what the split would be.

	Years 1-2 (£)	
	Low	High
Database development	168,137	216,599
Project team costs	92,578	118,382
Communications and engagement	17,350	21,162
Stakeholder support and guidance	1,476	1,804
<b>Total</b>	<b>279,541</b>	<b>357,947</b>

37. Recurring annual costs are estimated to range from £48,493 to £64,778 in years 1 and 2 with this tapering to £47,017 and £62,974 in year 3, in line with an anticipated drop in queries as charities become accustomed to the new rules. The ongoing maintenance of the database is estimated to cost between £37,538 and £43,121 annually, and this would include increased capacity, data storage and website hosting. The provision of stakeholder support and guidance is estimated to be in the range of £2,952 to £3,608 in years 1 and 2 before tapering to £1,476 to £1,804 in year 3 (in line with the anticipated drop in queries).

38. Casework would include OSCR carrying out a sample check on 5-10% of the database for accuracy, processing dispensation requests and any subsequent reviews, and processing Subject Access Requests. OSCR anticipates receiving between 10-50 requests for dispensation, and subsequently between 1-10 requests for a review of a dispensation decision, annually. The processing of Subject Access Requests under data protection legislation have estimated to be between 1-10 requests annually. Dispensation and Subject Access Requests figures have been calculated taking into account the usual number received by OSCR in a year and based on the experience of CCEW. These costs are estimated to range from £8,003 to £18,049 annually.

	Year 1 (£)		Year 2 (£)		Year 3 (£)	
	Low	High	Low	High	Low	High
Database maintenance	37,538	43,121	37,538	43,121	37,538	43,121
Casework	8,003	18,049	8,003	18,049	8,003	18,049
Stakeholder support and guidance	2,952	3,608	2,952	3,608	1,476	1,804
<b>Total</b>	<b>48,493</b>	<b>64,778</b>	<b>48,493</b>	<b>64,778</b>	<b>47,017</b>	<b>62,974</b>

### **Costs on Local Authorities**

39. ALEOs are independent charities and therefore any costs associated with them would not fall to local authorities. Many local authorities manage historic trusts and in those circumstances, the process for providing charity trustee details to OSCR would take place at the same time as completing the annual return, as well as routinely throughout the year, as and when trustee details change. Local authorities would notice an addition to their time in order to complete this process. This would vary hugely depending on the number of trustees a charity has and how frequently

trustee details change and therefore it is not possible to estimate the time involved. However, in most circumstances, the local authority is a corporate trustee for the historic trusts that they manage, and the contact details would not change regularly. Should a local authority apply for a dispensation (or subsequent review of OSCR's decision), this would involve a small addition to their time in order to complete this process.

### **Costs on Other Bodies, Individuals, Businesses or Third Sector Organisations**

40. The process for providing charity trustee details to OSCR would take place at the same time as completing the annual return, as well as routinely throughout the year, as and when trustee details change. Charity trustees, employees or other designated individuals that manage charities or the submission of their accounts would notice an addition to their time in order to complete this process. This would vary hugely depending on the number of trustees a charity has and how frequently trustee details change, and therefore it is not possible to estimate the time involved. For example, a grant-giving trust where the trustees are a family would be unlikely to see changes other than to contact details (such as a change of address) throughout the charity's lifetime. On the other hand, a playgroup where the trustees are the parents of children attending the playgroup would see a higher turnover of trustees annually and subsequently more time would need to be spent on submitting trustee details. Should a charity or trustee apply for a dispensation (or subsequent review of OSCR's decision), this would involve a small addition to their time in order to complete this process.

## **UPDATING THE CRITERIA FOR THE AUTOMATIC DISQUALIFICATION OF CHARITY TRUSTEES AND EXTENDING IT TO INDIVIDUALS WITH SENIOR MANAGEMENT POSITIONS IN CHARITIES (SECTIONS 4 TO 6)**

### **Detail of Change**

41. Recent changes to the charity legislation for England and Wales have extended the criteria for automatic disqualification of charity trustees to include additional disqualification criteria and now also includes disqualification for senior employees in charities. The Bill would extend the corresponding criteria in Scotland to ensure they remain fit for purpose and to ensure parity with England and Wales, with the provision that individuals could still apply to OSCR for a waiver from disqualification (either generally or in relation to a particular charity or type of charity) as the law currently allows. A trustee would have the opportunity to review any decision OSCR makes in relation to the waiver application.

42. OSCR proposes that the identification of disqualified trustees would continue to be managed through self-declaration by trustees. For organisations applying to be a charity, each trustee must complete a 'Trustee Declaration' form (available on the OSCR website) which would provide guidance on the disqualification criteria for their review before signing the declaration and confirming they are not disqualified. For existing charities, when a new trustee is being appointed, charities should make them aware of the disqualification criteria prior to being appointed, and then when the charity submits the new trustee's details to OSCR through its 'OSCR Online' system, there will be a declaration to confirm that the new trustee is not disqualified. With regards to senior employees, OSCR do not hold a list of senior employees in charities. OSCR would not be monitoring this and it would be up to charities to carry out due diligence.

## **Costs on Scottish Administration**

43. Implementation costs are estimated to be between £20,317 in the low scenario and £24,785 in the high scenario. Communications and engagement work including running an extensive communications campaign to inform charities of the changes (including staff time to design and produce relevant new guidance, update existing guidance and sections on the OSCR website, generate new content for the OSCR social media channels, as well as designing and paying for adverts in relevant third sector publications to promote and explain the changes) are expected to cost from £17,365 to £21,177. The provision of stakeholder support and guidance is estimated to cost £2,952 to £3,608, which would include staff time to answer queries from charities and other stakeholders.

	<b>Year 1</b>	
	<b>(£)</b>	
	<b>Low</b>	<b>High</b>
Communications and engagement	17,365	21,177
Stakeholder support and guidance	2,952	3,608
<b>Total</b>	<b>20,317</b>	<b>24,785</b>

44. Recurring costs are estimated between £11,026 in the low scenario and £60,920 in the high scenario annually. This includes the provision of stakeholder support and guidance which is estimated to cost between £738 and £902, which would include staff time to answer queries from charities and other stakeholders. Casework is estimated to cost between £10,288 and £60,018, and a breakdown of this is provided in paragraphs 45 and 46.

45. Casework would include processing waiver applications and OSCR conducting a sample check of ‘Trustee Declaration’ forms against the disqualification criteria when an organisation applies to be a charity. Based on the experience of CCEW, and adjusted to the relative number of charity trustees in Scotland by comparison to England and Wales, OSCR has estimated that it could receive between 8 and 16 waiver applications annually in the low and high range. OSCR has calculated reviews of waiver on the basis of the worst case scenario, whereby all 8 to 16 applications are refused and subsequently they each request a review of that decision. These casework costs are estimated at between £4,425 in the low scenario, and £9,948 in the high scenario.

46. In the circumstance where a trustee or senior employee requests a review of OSCR’s decision to refuse a waiver, and it upholds that decision, the individual could then choose to appeal to court. On the experience of CCEW, OSCR has calculated its solicitor and advocacy costs on the basis of 1 to 2 waiver decisions being appealed to court. The low scenario is estimated at £5,863 which covers 1 appeal with low solicitor and advocacy costs. The high scenario is estimated at £50,070 which covers 2 appeals with high solicitor and advocacy costs. These ranges have been provided to give a best estimate of the best and worst case scenarios and to demonstrate the variable costs involved in court appeals.

	Year 1		Year 2		Year 3	
	Low	High	Low	High	Low	High
Casework	10,288	60,018	10,288	60,018	10,288	60,018
Stakeholder support and guidance	738	902	738	902	738	902
<b>Total</b>	<b>11,026</b>	<b>60,920</b>	<b>11,026</b>	<b>60,920</b>	<b>11,026</b>	<b>60,920</b>

### **Costs on Local Authorities**

47. ALEOs are independent charities and therefore any costs associated with them would not fall to local authorities. Many local authorities manage historic trusts and in those circumstances, should they apply for a waiver or any subsequent action in the process, this would result in some additional time. However, in many circumstances, the local authority is a corporate trustee for the historic trusts and therefore this change would not be relevant.

### **Costs on Other Bodies, Individuals, Businesses or Third Sector Organisations**

48. Where a charity trustee or senior employee applies for a waiver, or a review of OSCR's decision, this would involve an addition to their time. It is not possible to measure this as it would be different in each case. In the circumstance where a trustee or senior employee requests a review of OSCR's decision to refuse a waiver, and it upholds that decision, the individual could then choose to appeal to the court. This could result in significant costs including legal fees to the individual or charity but this would vary hugely in each instance and it is not possible to estimate.

49. In feedback, a charity highlighted that the automatic disqualification of specific senior employees could require a review of recruitment processes and pre-employment checks. A cross-border charity (also registered in England and Wales) suggested that greater alignment in the automatic disqualification criteria may bring about efficiencies when recruiting.

## **PROVIDING OSCR WITH A NEW POWER TO ISSUE POSITIVE DIRECTIONS TO CHARITIES (SECTION 15)**

### **Detail of Change**

50. OSCR has legal powers to issue specific types of directions to charities and charity trustees. Most of OSCR's current powers are interdictory or preventative, requiring charity trustees or others not to take particular actions. For example, OSCR can issue directions restricting transactions that might be entered into or direct a financial institution holding property on behalf of the charity not to part with the property without OSCR's consent.

51. OSCR cannot currently direct charity trustees to take a specified positive action to remedy non-compliance or protect charitable assets. The absence of such a power has had a negative impact on OSCR's ability to intervene in certain cases and the addition of a power to issue positive

directions would enhance OSCR’s inquiry and enforcement powers in terms of protecting charitable assets and supporting good governance within charities.

### **Costs on Scottish Administration**

52. Implementation costs for OSCR are expected to range from £5,607 in the low scenario to £6,786 in the high scenario. Casework is estimated to cost between £1,911 and £2,335 which would be to provide training to the relevant OSCR staff. Communications and engagement is estimated to cost between £2,958 and £3,549, which would include amending some existing guidance and producing new guidance on the change. The provision of stakeholder support and guidance is estimated to cost between £738 and £902, which would include answering queries from charities and other stakeholders.

	<b>Year 1</b>	
	<b>(£)</b>	
	<b>Low</b>	<b>High</b>
Casework	1,911	2,335
Communications and engagement	2,958	3,549
Stakeholder support and guidance	738	902
<b>Total</b>	<b>5,607</b>	<b>6,786</b>

53. Recurring costs are estimated to be between £4,380 and £12,110 in year 1, with this tapering to a low of £3,942 and a high of £10,899 in year 2 and then a low of £3,548 and a high of £9,809 in year 3. These recurring costs would relate primarily to casework which focuses on staff time on processing cases. OSCR has estimated in year 1 that it would process between 12-25 positive directions, which has been calculated based on the number of annual past cases where a positive direction may have been appropriate. Year 1 casework costs are estimated to be between £4,217 and £11,911, with this tapering to between £3,795 and £10,720 in year 2 and then £3,416 and £9,648 in year 3. The number of positive directions is expected to taper slightly each year as OSCR use this power to direct relevant charities to submit their statement of account by a specified date, where they have failed to do so within the required period. OSCR expects that as the list of charities who have failed to submit their accounts reduces, the need to issue positive directions will taper slightly over the first few years. Casework costs also include any further enforcement action by OSCR for charities that do not comply with the positive direction, and for any subsequent reviews of decisions made by OSCR. It is estimated that between 2 and 4 charities may need further enforcement action, and that between 1-10 charities may seek a review of an OSCR decision to issue a positive direction which is based on the experience of CCEW using its equivalent power.

	<b>Year 1</b>		<b>Year 2</b>		<b>Year 3</b>	
	<b>Low</b>	<b>High</b>	<b>Low</b>	<b>High</b>	<b>Low</b>	<b>High</b>
Casework	4,217	11,911	3,795	10,720	3,416	9,648
Communications and engagement	163	199	147	179	132	161
<b>Total</b>	<b>4,380</b>	<b>12,110</b>	<b>3,942</b>	<b>10,899</b>	<b>3,548</b>	<b>9,809</b>

### **Costs on Local Authorities**

54. ALEOs are independent charities and therefore any costs associated with them would not fall to local authorities. Many local authorities manage historic trusts and in those circumstances, should OSCR carry out an inquiry into one of those trusts and determine that a positive direction should be issued, there could be costs to the charity in taking the relevant action (e.g. seeking legal advice or making changes) and these costs would be variable dependent on the action required. However, a charity could be subject to costs if under inquiry and therefore the introduction of this power does not present a significant additional cost to charities.

### **Costs on Other Bodies, Individuals, Businesses or Third Sector Organisations**

55. Where OSCR carries out an inquiry into a charity and determines that a positive direction should be issued, there could be costs to the charity in taking the relevant action (e.g. seeking legal advice or making changes). These costs would be variable dependent on the action required and whether the charity decides to take professional advice, such as legal, accounting or management and governance advice. However, this proposal does not change when OSCR would be carrying out an inquiry, rather the options open to OSCR following the inquiry. As such, any costs surrounding an inquiry would exist at present and therefore the introduction of this power does not present a significant additional cost to charities.

## **REMOVAL FROM THE SCOTTISH CHARITY REGISTER OF UNRESPONSIVE CHARITIES THAT FAIL TO SUBMIT STATEMENTS OF ACCOUNT (SECTION 11)**

### **Detail of Change**

56. All charities in Scotland are under a legal duty to prepare a statement of account and submit this to OSCR. Failure to do so can be regarded as misconduct in the administration of a charity. There are charities on the Register for which OSCR does not have up to date statements of account - some of which have never submitted accounts. It is likely that some charities no longer exist but have failed to notify OSCR to be removed from the Register.

57. Whilst there are existing mechanisms for OSCR to remove charities, failure to provide accounts and misconduct are not direct routes to removal. The addition of a specific, discretionary power to be able to remove a charity from the Register where it has failed to comply with the requirement to submit accounts and has failed to engage with OSCR would improve the accuracy of the Register and increase public trust and confidence.

### **Costs on Scottish Administration**

58. Implementation costs are estimated to range between £21,939 in the low scenario and £26,807 in the high scenario. Casework is estimated to cost between £3,136 and £3,833, which would be to provide training to the relevant OSCR staff. Communications and engagement is estimated to range from £18,803 to £22,974, which would include running an extensive communications campaign to inform charities of the change, including staff time to design and produce new guidance, update existing guidance and sections on the OSCR website, generate new content for the OSCR social media channels, as well as designing and paying for adverts in relevant third sector publications to promote and explain the changes.

	Year 1 (£)	
	Low	High
Casework	3,136	3,833
Communications and engagement	18,803	22,974
<b>Total</b>	<b>21,939</b>	<b>26,807</b>

59. There are expected to be savings to OSCR as a result of reduced staff time being spent on pursuing charities for failure to submit their statements of account, as discussed at paragraph 60 below. Recurring annual costs under the low scenario are estimated as savings of £1,406 in year 1, with this tapering to savings of £1,266 in year 2 and savings of £1,138 in year 3. Under the high scenario, costs are estimated as £2,222 in year 1, with this tapering to £2,000 in year 2 and £1,799 in year 3. OSCR proposes to collate a list of charities eligible for removal, those being charities that have failed to comply with the requirement to submit accounts and have persistently failed to engage with OSCR. This list would then be dealt with in batches to action removal which would first include publishing notices for removal to allow for, either, charities to engage with OSCR or for any representations to be submitted to OSCR. Representations could be received by, for example, a creditor of the charity or a member of the public who utilises the charity's services. Where relevant, charities will be removed from the Register. All costs are expected to taper as this work progresses and the list reduces over time.

60. Casework encompasses the costs of processing removals and also savings from OSCR then no longer needing, post-removal, to pursue those charities for failure to submit their statements of account in future years (as charities which fail altogether to submit accounts on one occasion usually continue to fail to submit accounts year-on-year). Both the low and high scenarios include those savings, which OSCR has estimated at approximately 200 to 100 hours of staff time, saving between £3,786 and £1,893 in year 1 with this then tapering over time as the list reduced. The cost of processing removals is estimated to be between £741 and £2,112, also tapering over time. Taking into account the overall spend and savings, it is estimated that there will be savings in the low scenario of £3,045 in year 1, with this tapering to savings of £2,741 in year 2 and then savings of £2,466 in year 3. The high scenario estimates costs of £219 in year 1, with this tapering to £197 in year 2 and then £177 in year 3.

61. The recurring costs of providing stakeholder support and guidance, which includes answering queries from charities, is estimated to be between £1,476 and £1,804 in year 1, with this tapering to between £1,328 and £1,624 in year 2 and then between £1,196 and £1,461 in year 3. In light of the extensive communications campaign which will already have been carried out when this power first comes into force, communications and engagement will cover a light communications campaign to continue to inform charities of the change and is estimated to be between £163 and £199 in year 1, with this tapering to between £147 and £179 in year 2 and then between £132 and £161 in year 3.

\*Figures in red and in brackets represent a saving.

	Year 1		Year 2		Year 3	
	Low	High	Low	High	Low	High
Casework*	(3,045)	219	(2,741)	197	(2,466)	177
Communications and engagement	163	199	147	179	132	161
Stakeholder support and guidance	1,476	1,804	1,328	1,624	1,196	1,461
<b>Total*</b>	<b>(1,406)</b>	<b>2,222</b>	<b>(1,266)</b>	<b>2,000</b>	<b>(1,138)</b>	<b>1,799</b>

### Costs on Local Authorities

62. ALEOs are independent charities and therefore any costs associated with them would not fall to local authorities. Many local authorities manage historic trusts but no costs are expected as a result of this change.

### Costs on Other Bodies, Individuals, Businesses or Third Sector Organisations

63. In some instances, a charity that is removed under this new power will already have ceased activity (but failed to obtain consent from, and subsequently notify, OSCR) which is why they have not submitted their statement of account or responded to correspondence from OSCR. In these cases, there should be no costs associated with removal from the Register.

64. Where a charity is still operating, receives notification of OSCR's intent to remove the charity for not submitting its statement of account, and decides to engage with OSCR to correct the matter, potential costs to the charity could include use of their time to respond to OSCR and submit their accounts, or costs to have the accounts prepared and examined (if the charity hasn't been routinely taking this action as it should have been). The use of the charity's time to engage with OSCR should incur minimal costs, as no onerous requirements are imposed about the way in which the charity should respond and there is no requirement for the charity to give any particular undertakings, etc. The accounting costs are costs which the charity should have been meeting anyway.

65. Where a charity is still operating, receives notification of OSCR's intent to remove the charity for not submitting its statement of account and fails to engage with OSCR, the charity would in most cases be removed from the Register. This could result in the organisation losing funding and public support. For example, many funders will only accept grant applications from registered charities and withdraw funding if charitable status is removed. It is not possible to estimate what these costs could be as this would vary in each circumstance.

66. As part of the process, individuals or organisations can submit representations to OSCR regarding the intention to remove the charity from the Register. This would result in the use of their time to submit the representation but it is not possible to estimate the time involved.

## **A REQUIREMENT FOR ALL CHARITIES IN THE SCOTTISH CHARITY REGISTER TO HAVE AND RETAIN A CONNECTION TO SCOTLAND (SECTION 16)**

### **Detail of Change**

67. To be a registered charity in Scotland, a body must have wholly charitable purposes and intend to provide public benefit, but there is no requirement for the body to have any connection to Scotland (with the exception of Scottish Charitable Incorporated Organisations (SCIOs)). The Bill seeks to amend this given concerns about the ability of OSCR to effectively regulate such charities given the inherent difficulties in ascertaining what activities the charity is carrying out and how they are providing public benefit. There is also a higher risk of OSCR losing touch with such charities.

68. This would not preclude the registration of cross-border charities, which could continue to register with both CCEW or the Charity Commission for Northern Ireland (CCNI), and OSCR where such charities have a connection to Scotland.

### **Costs on Scottish Administration**

69. Implementation costs are estimated to range from £1,276 in the low scenario to £2,354 in the high scenario. Casework is estimated to cost in the range of £374 to £1,300, and these costs have been calculated on the basis of the very small number of existing charities that do not appear to have a connection to Scotland. Casework activities would include investigating and potentially directing those charities to establish a connection to Scotland, removing the charities that don't comply, and potentially OSCR reviewing its direction or removal decision. Communications and engagement would include updating relevant OSCR guidance and its website, and running a light communications campaign, and is estimated to cost from £902 to £1,054.

	<b>Year 1</b>	
	<b>(£)</b>	
	<b>Low</b>	<b>High</b>
Casework	374	1,300
Communications and engagement	902	1,054
<b>Total</b>	<b>1,276</b>	<b>2,354</b>

70. Recurring costs are estimated to range from £63 in the low scenario to £1,335 in the high scenario. Under casework, it is estimated there will be a saving of £675 annually as, through the publication of the need for a connection to Scotland in the application for charitable status and relevant guidance, it is expected that some applications are not submitted and therefore a saving of staff time can be expected. The high scenario estimates a cost of £433, for staff time still being spent on processing applications without a Scottish connection and potentially refusing one application annually as a result. The provision of stakeholder support and guidance is estimated to cost between £738 and £902 annually, which would include answering queries from charities.

\*Figures in red and in brackets represent a saving.

	Year 1		Year 2		Year 3	
	Low	High	Low	High	Low	High
Casework*	(675)	433	(675)	433	(675)	433
Stakeholder support and guidance	738	902	738	902	738	902
<b>Total</b>	<b>63</b>	<b>1,335</b>	<b>63</b>	<b>1,335</b>	<b>63</b>	<b>1,335</b>

### **Costs on Local Authorities**

71. ALEOs are independent charities and therefore any costs associated with them would not fall to local authorities. Many local authorities manage historic trusts but no costs are expected as result of this change as the existing charities that do not retain a link to Scotland are not managed by local authorities.

### **Costs on Other Bodies, Individuals, Businesses or Third Sector Organisations**

72. Of the charities that currently fall within the scope of this measure, there may be costs to them making changes to comply but it is also possible that they may choose to continue operating as non-charities and therefore there would be no costs. It is not possible to quantify what costs could be involved.

## **A POWER FOR OSCR TO CONDUCT INQUIRIES INTO FORMER CHARITIES AND THEIR CHARITY TRUSTEES ETC. (SECTION 13)**

### **Detail of Change**

73. OSCR does not have the power to make inquiries into a body which is no longer a charity, a body which is no longer controlled by a charity or a charity which has ceased to exist. This means that if OSCR is not aware of potential misconduct before a charity ceases to exist or ceases to be a charity, or before a body ceases to be controlled by a charity, OSCR cannot open an inquiry if information subsequently becomes known.

74. If OSCR cannot open an inquiry, it cannot gather the necessary evidence to allow it to make an application to the Court of Session to permanently disqualify individuals from being charity trustees where necessary. This poses a risk that trustees who are guilty of serious misconduct could go on to be trustees of other charities if the misconduct were only discovered after the charity in question ceased to exist or was removed from the Register.

75. Allowing OSCR to make inquiries into former charities, charities that have ceased to exist and bodies formerly controlled by a charity in relation to the period where the charity/ body fell within OSCR's remit as a regulator would safeguard charitable assets and improve public trust and confidence in charities.

### **Costs on Scottish Administration**

76. Implementation costs are estimated to range from £2,193 in the low scenario to £3,805 in the high scenario. Casework which would involve training of relevant OSCR staff is estimated to cost between £955 and £2,335. Communications and engagement is estimated to cost between £1,238 and £1,470, which would cover updating relevant OSCR guidance and website.

	<b>Year 1 (£)</b>	
	<b>Low</b>	<b>High</b>
Casework	955	2,335
Communications and engagement	1,238	1,470
<b>Total</b>	<b>2,193</b>	<b>3,805</b>

77. Recurring costs are expected to range from £13,176 in the low scenario and £45,803 in the high scenario, which would be focused on casework activities. OSCR has calculated costs on the basis of carrying out between 3 and 5 such inquiries annually, of which some won't require court action and some will. These figures are based on OSCR's casework experience. Costs have been included in the instance where court action is both defended and undefended, along with the relevant legal costs of preparing petition for court, and solicitor and advocacy fees.

	<b>Year 1</b>		<b>Year 2</b>		<b>Year 3</b>	
	<b>Low</b>	<b>High</b>	<b>Low</b>	<b>High</b>	<b>Low</b>	<b>High</b>
Casework	13,176	45,803	13,176	45,803	13,176	45,803
<b>Total</b>	<b>13,176</b>	<b>45,803</b>	<b>13,176</b>	<b>45,803</b>	<b>13,176</b>	<b>45,803</b>

### **Costs on Local Authorities**

78. ALEOs are independent charities and therefore any costs associated with them would not fall to local authorities. Many local authorities manage historic trusts and in those circumstances, should it become necessary for OSCR to investigate one of these charities, there could be costs associated with seeking legal advice. The cost of legal advice could vary significantly due to a number of factors. Each legal firm has different fee levels and each OSCR inquiry varies, therefore the amount of legal advice required could vary between a few hours or weeks. Further to this, some charities may receive pro bono advice, some may seek advice from non-legal sources such as Third Sector Interfaces (TSIs), and some larger charities may have in-house advisers. It is therefore not possible to estimate costs.

### **Costs on Other Bodies, Individuals, Businesses or Third Sector Organisations**

79. No direct costs are expected. Should a trustee of a charity fall into the circumstances of this change, and it becomes necessary for OSCR to investigate, there could be costs to replying to OSCR's direction and potentially with seeking legal advice. The cost of legal advice could vary significantly due to a number of factors. Each legal firm has different fee levels and each OSCR inquiry varies, therefore the amount of legal advice required could vary between a few hours or

weeks. Further to this, some charities may receive pro bono advice, some may seek advice from non-legal sources such as Third Sector Interfaces (TSIs), and some larger charities may have in-house advisers. It is therefore not possible to estimate costs.

## **A REQUIREMENT FOR DE-REGISTERED CHARITIES' ASSETS TO CONTINUE TO BE USED TO PROVIDE PUBLIC BENEFIT (SCHEDULE, PARAGRAPH 7)**

### **Detail of Change**

80. If a charity is removed from the Register but continues to operate as a non-charitable body, it is under a duty to use the assets it held before it de-registered for the charitable purposes then set out in its entry on the Register. While any such “pre-removal” assets must be used for charitable purposes, there is currently no specific requirement for them to be used to provide public benefit. This means that assets that have been built up during the life of the charity could potentially be used for private gain, providing they were used for a ‘charitable purpose’. The addition of a requirement for such assets to also provide public benefit, in Scotland or elsewhere, would safeguard charitable assets.

### **Costs on Scottish Administration**

81. Implementation costs are estimated to range from £951 in the low scenario to £1,103 in the high scenario, which would consist of communications and engagement activities to update relevant OSCR guidance, correspondence and website, as well as running a light communications campaign regarding the change.

	<b>Year 1</b>	
	<b>(£)</b>	
	<b>Low</b>	<b>High</b>
Communications and engagement	951	1,103
<b>Total</b>	<b>951</b>	<b>1,103</b>

82. This is amending an existing process, therefore there are no additional recurring costs expected. That is, there is already a mechanism for reviewing the use of protected charitable assets following a charity’s removal. This mechanism would not need to change as a result of this amendment.

### **Costs on Local Authorities**

83. No additional costs are expected. ALEOs are independent charities and therefore any costs associated with them would not fall to local authorities. Many local authorities manage historic trusts and in those circumstances, should they apply for one of these charities to be removed from the register, they are still required to prepare and submit a statement of account to OSCR for the “pre-removal” assets. The requirement for those assets to continue to be used to provide public benefit does not impact on the existing requirement to prepare and submit statements of account to OSCR.

## **Costs on Other Bodies, Individuals, Businesses or Third Sector Organisations**

84. No additional costs are expected. Charities that apply to be removed from the register are still required to prepare and submit statements of account to OSCR for the “pre-removal” assets. The requirement for those assets to continue to be used to provide public benefit does not impact on the existing requirement to prepare and submit statements of account to OSCR.

## **CLARIFICATION OF EXISTING PROVISION, TO IMPROVE SPEED AND EFFICIENCY REGARDING OSCR’S POWERS TO GATHER INFORMATION FOR INQUIRIES (SECTION 14)**

### **Detail of Change**

85. OSCR can legally require any person to provide information which it considers necessary for its inquiries. If OSCR requests such information about a charity from a third party, it must also give notice to the charity in question that it is the subject of the request and provide the charity with the right to review. However, the legislation does not take account of situations where the body in respect of which information is sought is not a charity (e.g. a body that is misrepresenting itself as a charity or a charity that has ceased to exist). The effect of this is that OSCR cannot require a third party to provide information as it cannot serve the required notice on a ‘charity.’ This potentially hinders OSCR inquiries as it cannot access all the information it may require.

86. Where OSCR decides to request information from a third party about a charity to help with its inquiries, OSCR must notify the charity of its decision prior to doing so. This has to be done within specified time limits and the charity has a right of review against OSCR’s decision. There is some doubt as to how these various notice periods/ time limits are intended to interact and the intention is to amend the legislation to clarify the position, thereby making the process more efficient.

## **Costs on Scottish Administration**

87. Implementation costs are estimated to range from £2,955 in the low scenario to £3,611 in the high scenario. Casework activities are estimated to cost between £1,911 and £2,335, which would be the provision of training to relevant OSCR staff. Communications and engagement is estimated to cost between £1,044 and £1,276, which would be to update OSCR guidance.

	<b>Year 1</b>	
	<b>(£)</b>	
	<b>Low</b>	<b>High</b>
Casework	1,911	2,335
Communications and engagement	1,044	1,276
<b>Total</b>	<b>2,955</b>	<b>3,611</b>

88. This is amending an existing process, therefore there no additional recurring costs are expected.

**Costs on Local Authorities**

89. ALEOs are independent charities and therefore any costs associated with them would not fall to local authorities. Many local authorities manage historic trusts but no costs are expected as a result of this change.

**Costs on Other Bodies, Individuals, Businesses or Third Sector Organisations**

90. No costs are expected as result of this change. Where third parties are asked to provide information, this would involve their time to respond.

**THE CREATION OF A RECORD OF CHARITY MERGERS AND PROVISION FOR THE TRANSFER OF LEGACIES (SECTION 12)**

**Detail of Change**

91. Charities can receive significant income from legacies in wills. In Scotland, there is a risk that a legacy would be lost to the charitable sector where a charity changes its legal form or merges with another charity because the charity named in the will (the transferor charity) has ceased to exist. The creation of this record would ensure income from legacies are not lost (and that charities are not deterred from merging or incentivised to retain “shell” charities to receive legacies) and this would also be consistent with legislation in England and Wales.

**Costs on Scottish Administration**

92. Implementation costs are estimated to range from £17,308 in the low scenario to £21,195 in the high scenario. Casework activity would be the creation of a spreadsheet to track the mergers and is estimated to cost between £76 and £151. Communications and engagement activities are estimated to cost between £17,232 and £21,044, which would cover updating OSCR guidance and running an extensive communications campaign to make testators aware of the change. This would include staff time to design and produce relevant new guidance, generate new content for the OSCR website and social media channels, as well as design and paying for adverts in relevant publications to promote and explain the new record of mergers.

	<b>Year 1</b>	
	<b>(£)</b>	
	<b>Low</b>	<b>High</b>
Casework	76	151
Communications and engagement	17,232	21,044
<b>Total</b>	<b>17,308</b>	<b>21,195</b>

93. Recurring annual costs would be centred on updating the record and are estimated to range from £284 and £581. This would cover staff time to update the spreadsheet, based on the usual number of applications that OSCR receives, where a merger takes place.

	Year 1		Year 2		Year 3	
	Low	High	Low	High	Low	High
Populate website spreadsheet	284	581	284	581	284	581
<b>Total</b>	<b>284</b>	<b>581</b>	<b>284</b>	<b>581</b>	<b>284</b>	<b>581</b>

### **Costs on Local Authorities**

94. ALEOs are independent charities and therefore any costs associated with them would not fall to local authorities. Many local authorities manage historic trusts but no costs are expected as a result of this change.

### **Costs on Other Bodies, Individuals, Businesses or Third Sector Organisations**

95. There is potential for the proposal to result in charities benefiting from legacies that could have been lost prior to a record of charity mergers being introduced (for example, a legacy in favour of a charity that has ceased to exist because it has merged with another charity failing because it could not transfer to the new charity). A 2021 report<sup>6</sup> estimates that gifts in wills raise over £90 million annually for Scottish charities. This report also sets out that around 500 Scottish charities are named in wills each year and 64% of those are small charities. On the other hand, people who may stand to benefit from a legacy to a charity failing (because the charity no longer exists) may now no longer get that benefit, because the deeming provision to be introduced alongside the record of mergers will mean fewer legacies to charities are lost. There is also the possibility that there could be a reduction in court cases disputing legacies and therefore this would see a saving. However, it is not possible to estimate what these costs could be as they would vary greatly in each circumstance.

## **PROVIDING OSCR WITH A POWER TO APPOINT INTERIM TRUSTEES TOGETHER WITH A LIST OF MINOR OR TECHNICAL AMENDMENTS TO THE 2005 ACT (SECTION 8 AND SCHEDULE)**

### **Detail of Change**

96. Through OSCR’s practical knowledge of applying the provisions of the 2005 Act, OSCR has highlighted a number of technical changes which would benefit from being made and these have been taken forward in the Bill. Further detail on these can be found in the Policy Memorandum. For the most part, these changes are clarifying existing statutory provisions or supplementing them in a way that would not have any effect on costs. While most of these changes are therefore not changes which could ever give rise to costs, some aspects merit further explanation as to why no costs are expected to arise and this is provided below.

### **Costs on Scottish Administration**

97. The extension of the ability to appoint acting charity trustees is not expected to have significant cost implications for OSCR. The making of an appointment should not in itself be a

<sup>6</sup> [legacyresiliencereport\\_scotland\\_aw\\_digital.pdf](https://www.rememberacharity.org.uk/legacyresiliencereport_scotland_aw_digital.pdf) (rememberacharity.org.uk)

difficult or time consuming process for OSCR. It is also likely to arise only relatively infrequently. Further, any costs incurred by OSCR in terms of staff time in reviewing the appropriateness of the appointment or giving advice on the process is likely to be offset by a saving in time dealing with enquiries about what course of action can be taken in these circumstances. It will also avoid the need to resort, in some cases, to the more expensive course of action of OSCR applying to the Court of Session under section 34(5)(c) of the 2005 Act for a judicial factor to be appointed.

98. In theory, removal of the obligation on OSCR to periodically review every Register entry would result in a saving to OSCR. However, given that reviews of Register entries have to date been targeted rather than wholesale, the removal of that requirement will not result in any savings in practice.

99. The introduction of an ability for OSCR to give directions as to the use of working names could result in a small increase in OSCR's workload. However, it is not expected that many such directions will need to be given. It is likely that the knowledge that such directions can be issued will be sufficient to cause charities to avoid using working names which are objectionable.

100. The introduction of a statutory basis for the annual return is not expected to give rise to any costs for OSCR given that the annual return is already deployed on a non-statutory basis.

101. Accordingly, the only costs which are likely to arise relate to minor changes to guidance – for example, the guidance issued to Scottish Charitable Incorporated Organisations (SCIOs) about the information they include on their documents will need to be adjusted to match any new requirements which are imposed.

102. Implementation costs are estimated to range from £909 in the low scenario to £1,025 in the high scenario, which would cover updating relevant OSCR guidance and the website.

	Year 1 (£)	
	Low	High
Communications and engagement	909	1,025
<b>Total</b>	<b>909</b>	<b>1,025</b>

103. No recurring costs are expected.

### **Costs on Local Authorities**

104. ALEOs are independent charities and therefore any costs associated with them would not fall to local authorities. Many local authorities manage historic trusts but no costs are expected as a result of this change for the reasons set out below in relation to third sector organisations more generally.

## **Costs on Other Bodies, Individuals, Businesses or Third Sector Organisations**

105. No costs are expected as a result of this change.

106. The ability for an acting charity trustee to be appointed to a charity in a greater range of circumstances may result in a saving for those charities directly affected in cases where OSCR might otherwise have felt it necessary to go down the more expensive route of applying for a judicial factor to be appointed under section 34(5)(c) of the 2005 Act. However, as those costs would vary depending on the circumstances, it is not possible to cost that saving for the very small number of charities for which it would be relevant.

107. The ability for OSCR to give a direction to a charity to stop using an objectionable working name is not expected to give rise to any real costs for charities. It is expected that this power will rarely need to be used. Further, the Bill does not introduce any requirement to obtain OSCR's permission to use, or change, a charity's working name. The only costs that could therefore arise would be in a case where a charity is directed to stop using a working name and incurs costs either by taking advice on appealing that direction or by needing to update its stationery supplies to take account of the working name no longer being used. It has not been possible to cost this, given that the costs would vary depending on the individual charity's circumstances, but it is expected that this would arise only very infrequently – if at all.

108. The introduction of a statutory requirement to complete an annual return will not give rise to any additional costs. The reason for this is that charities already complete an annual return at present without there being a statutory requirement to do so and any costs associated with the completion of the annual return will already be incurred by the charity. The content of the annual return itself is not expected to change as a result of having a statutory basis, and therefore charities should not incur any costs beyond anything that they already incur at present in completing the annual return.

109. The Bill also allows further requirements to be imposed upon SCIOs as to the information that has to be stated on various documents issued by them or on their behalf. Those documents can include any website which the SCIO may have. However, it is intended that any new rules imposed by regulations would be introduced with a sufficient lead-in time to allow SCIOs to run-down their existing stock of stationery first and also allow any updating of the SCIO's website in response to this change to be combined with routine updating of the website. As such, it is not expected that the exercise of this power will lead to additional costs for charities.

110. Finally, the Bill introduces a requirement for certain reports about concerns made by auditors or independent examiners to be in writing rather than leaving open the method by which they are made. This is not expected to give rise to any additional costs for such persons: the need for such reports should not arise often but, where it does, it would ordinarily be done by writing by the person anyway, to ensure that there was evidence that the duty had been fulfilled.



*This document relates to the Charities (Regulation and Administration) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 15 November 2022*

# **CHARITIES (REGULATION AND ADMINISTRATION) (SCOTLAND) BILL**

## **FINANCIAL MEMORANDUM**

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