

## [Charities and Trustee Investment \(Scotland\) Bill](#)

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Bill Number: SP Bill 32  
Introduced on: 15 November 2004  
Introduced by: Malcolm Chisholm (Executive Bill)  
Passed: 9 June 2005  
Royal Assent: 14 July 2005

[2005 asp 10](#)

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### **Passage of the Bill**

The [Charities and Trustee Investment \(Scotland\) Bill](#) [SP Bill 32] was introduced in the Parliament by Malcolm Chisholm on 9 June 2005 with the Communities Committee designated the lead committee. The Stage 1 debate took place on [9 March 2005](#) and the [Bill was passed](#) following the Stage 3 parliamentary debate on [9 June 2005](#).

### **Purpose and objectives of the Bill**

The primary objective of the Bill was to establish a new regulatory framework for the charitable sector in Scotland, which would help promote public confidence in charities and meet the needs of the Scottish charity sector.

### **Provisions of the Bill**

The Bill makes provision for a new regulatory regime for charities in Scotland. It establishes the Office of Scottish Charity Regulator (OSCR) as a statutory body corporate. The general functions of the OSCR are to:

- determine charitable status
- keep a public register of charities
- encourage facilitate and monitor compliance with charity legislation
- investigate misconduct
- take remedial or protective action if necessary
- advise or make proposals to the Scottish Ministers on matters relating to its functions

The Bill removes the presumption of public benefit for all charities and introduces the two-part 'charity-test' where an organisation must prove that it:

- has one or more of the sixteen charitable purposes, including the advancement of religion and the prevention or relief of poverty.
- is able to demonstrate that it provides public benefit.

The Bill also includes provisions for a new legal form for charities to take on corporate status and limit liability for their members.

### **Parliamentary consideration**

Prior to the introduction of the Bill the Communities Committee consulted with a number of voluntary and charitable organisations in Aberdeen, Perth and Glasgow on the Scottish Executive's draft Charities and Trustee Investment (Scotland) Bill. They also met with several independent schools. In June 2004 the Committee held an informal video-conference with the Joint Committee at Westminster which was considering the draft Charities Bill for England and Wales. The Communities Committee received evidence from a wide range of organisations including a number of charities, independent schools, Universities Scotland and the National Galleries, Museum and Library as part of its Stage 1 inquiry.

There were several amendments to the Bill as it underwent its passage through Parliament.

There was debate concerning whether private schools would or should retain their charitable status under the requirement that all charities have to demonstrate that they provide public benefit. At Stage 2, John Home Robertson MSP introduced an amendment, subsequently agreed to, which inserted specific reference to charges and fees being considered in relation to whether any condition on obtaining a benefit is unduly restrictive. Ultimately provisions in the Bill mean that it will be OSCR that will decide if organisations can be recognised as charities on a case by case basis. There was debate surrounding whether private schools would lose tax relief if they lost their charitable status. This is because tax relief is a matter for HM Revenue & Customs, which makes such decisions based on the definition of what is charitable for tax purposes in UK legislation.

There were also changes to the definition of charitable purposes including the addition of the advancement of health, the provision of recreational facilities or the organisation of recreational activities, the promotion of religious or racial harmony and the promotion of equality and diversity.

The Bill as introduced sought to prevent bodies whose constitution allows control by a third party from passing the charity test. Concerns were identified during committee Stage 1 evidence, especially in relation to the status of national collection non-departmental public bodies, e.g. National Galleries of Scotland, as charities. Malcolm Chisholm MSP Minister for Communities introduced an amendment at Stage 2, subsequently agreed to, which meant that any body that has a ministerial power of direction in its constitution will not be eligible for charitable status, unless ministers seek specific exemptions

from that requirement and that other bodies that are under some form of control will continue to be eligible.