


 SPICe

 The Information Centre  
 An t-Ionad Fiosrachaidh

## Social Justice and Social Security Committee

### 5th Meeting, 2023 (Session 6), Thursday, 2 March

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

The [Charities \(Regulation and Administration\)\(Scotland\) Bill](#) was introduced in the Scottish Parliament on 15 November 2022. [SPICe has published a briefing on the Bill.](#)

The Committee issued a [written call for evidence](#) on the Bill which ran from 8 December 2022 to 3 February 2023, with the option for respondents to complete either the main call for views, or a shorter survey. There were 55 responses to the short survey and 35 responses to the detailed consultation. [SPICe has prepared a summary of responses](#) to both of these consultation exercises.

The Committee will have its first formal evidence session on the Bill on 2 March when it will hear from the following organisations.

### Panel 1: Charity representative groups, designated religious charity and local authority

- **Scottish Council for Voluntary Organisations:** The Scottish Council for Voluntary Organisations (SCVO) is the national body representing the third sector, providing support to third sector organisations with operational issues. SCVO also lobbies government on policy issues. It is a membership organisation, funded primarily through Scottish Government grant funding and membership fees. SCVO has around 100 paid staff.
- **Aberdeen City Council:** one of Scotland's 32 local authorities, Aberdeen City Council was one of two local authorities that responded to the Committee's call for views.
- **Church of Scotland:** The Church of Scotland is the parent charity of approximately 1,100 congregations, each of which has separate charitable

status, along with a number of Presbyteries and three statutory corporations, all of which also are registered charities. The Church of Scotland is a Designated Religious Charity (DRC), meaning that some aspects of charity law apply differently to the organisation.

- **Volunteer Scotland:** Volunteer Scotland is Scotland's national centre for volunteering. Volunteer Scotland works in partnership with other organisations to encourage, develop and support volunteering. Volunteer Scotland also undertake research on the voluntary sector in Scotland and undertake disclosure services. They receive funding from the Scottish Government and also for disclosure services. Volunteer Scotland has around 40 paid staff.
- **Methodist Church in Scotland:** The Methodist Church in Scotland is the umbrella body for individual Methodist churches in Scotland. Individual churches in the Methodist Church in Scotland are separately registered charities. The Methodist Church in Scotland is not a Designated Religious Charity (DRC), as there is a size threshold for qualifying as a DRC.

## Panel 2: Charities (varied sizes) and non-departmental public body

- **Alzheimer Scotland:** Alzheimer Scotland is Scotland's national dementia charity, providing support and information to people with dementia, their carers and families, campaigning for the rights of people with dementia and funding dementia research. Alzheimer Scotland has over 9,000 members and employs around 400 full and part-time staff across Scotland.
- **Edinburgh Rape Crisis Centre:** Edinburgh Rape Crisis Centre is an Edinburgh-based charity that offers support to survivors of sexual violence in Edinburgh, East and Midlothian. It also offers some services in West Lothian. Edinburgh Rape Crisis Centre has 48 staff and 9 board members.
- **Children's Hospices Across Scotland (CHAS):** CHAS is a registered charity which provides hospice services in Scotland for children and young people with life-shortening conditions. CHAS runs two children's hospices, Rachel House in Kinross and Robin House in Balloch as well as a home care service called CHAS at Home. Working with the NHS, CHAS has specialist teams in all children's hospitals in Scotland. CHAS has over 300 employees across 11 sites in Scotland.
- **Bòrd na Gàidhlig:** Bòrd na Gàidhlig is a non-departmental public body (NDPB) responsible for promoting Gaelic development, including providing advice to Scottish Ministers on Gaelic issues. It is responsible for development of the National Gaelic Language Plan (NGLP).

This paper provides background and suggested areas of questioning in the main areas of the Bill's provisions. Further detail can be found in the [SPICe briefing](#) and in the Bill documents.

## Introduction

The Bill aims to strengthen and update the current legislative framework for charities by:

- increasing transparency and accountability in charities
- making improvements to OSCR's powers
- bringing Scottish charity legislation up to date with certain key aspects of charity regulation in England, Wales and Northern Ireland.

The Scottish Government considers the Bill proposals to be "generally regulatory in nature as opposed to anything more fundamental about charities". Acknowledging that there have been calls for a more fundamental review of the charitable sector, the Scottish Government intends to consult further with the sector following the passage of this Bill.

If passed, the Bill would:

- require OSCR to publish names of trustees on the public Scottish Charity Register
- require OSCR to maintain an internal database of trustee contact details
- update the range of offences and situations that result in disqualification of charity trustees
- extend the criteria for disqualification to apply to senior management positions as well as trustees
- require OSCR to create a searchable record of charity trustees who have been barred by the courts from acting as trustees
- allow OSCR to appoint interim trustees in specific circumstances
- require OSCR to publish annual accounts for all charities on the Register
- allow OSCR to remove charities from the Register if they fail to submit accounts and fails to respond to subsequent communication from OSCR
- require OSCR to keep a record of charity mergers to assist with the transfer of legacies
- allow OSCR to undertake inquiries into former charities and their trustees
- enable OSCR to issue positive directions to charities following inquiry work

- require charities to demonstrate a connection to Scotland if they are to be registered by OSCR.

This themes paper is structured around eight themes:

|                                                                                                             |           |
|-------------------------------------------------------------------------------------------------------------|-----------|
| <b>Theme 1: Consultation and plans for wider review</b> .....                                               | <b>4</b>  |
| <b>Theme 2: General principles of the Bill</b> .....                                                        | <b>5</b>  |
| <b>Theme 3: Information about charity trustees</b> .....                                                    | <b>6</b>  |
| <b>Theme 4: Publication of charity accounts</b> .....                                                       | <b>8</b>  |
| <b>Theme 5: Disqualification from being a charity trustee or holding a senior management position</b> ..... | <b>8</b>  |
| <b>Theme 6: OSCR inquiries</b> .....                                                                        | <b>9</b>  |
| <b>Theme 7: Other miscellaneous issues</b> .....                                                            | <b>10</b> |
| <b>Theme 8: Financial implications of the Bill</b> .....                                                    | <b>12</b> |

## Theme 1: Consultation and plans for wider review

The Bill largely reflects proposals put forward by OSCR in a [2018 paper to Scottish Ministers](#). On 7 January 2019, the Scottish Government [launched a consultation based on OSCR's proposals](#), seeking views on potential improvements to the statutory charity regulation framework in Scotland. A further consultation was launched in 2020 with a further [consultation exercise](#) and targeted engagement sessions with stakeholders.

A number of witnesses expressed some disappointment with the consultation process that preceded the Bill's introduction. **Edinburgh Rape Crisis Centre**, 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.

Acknowledging that there have been calls for a more fundamental review of the charitable sector, the Scottish Government intends to consult further with the sector following the passage of this Bill.

Many of the witnesses attending today highlighted in their responses that a wider review was necessary, including **SCVO, Volunteer Scotland, Edinburgh Rape Crisis Centre**, the **Methodist Church in Scotland** and the **Church of Scotland**.

**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. **SCVO** also noted 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.

A common theme expressed by respondents to the consultation 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 also felt that there were areas where more clarity would be helpful – such as definition of public benefit and that consideration should be given to streamlining the process to enable charities to make minor changes more easily.

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

**Members may wish to ask:**

1. **Were panel members involved in either of the consultation exercises run by the Scottish Government in 2019 and 2021 that preceded the introduction of the Bill?**
2. **If so, what are the views of panel members on the consultation exercises and the extent to which views are reflected in the Bill?**
3. **If they were not involved, are there reasons why they didn’t get involved, such as lack of time, lack of awareness or lack of interest?**
4. **Do panel members think a wider review of the charity sector is required and, if so, what aspects of the charity sector should this cover?**

## **Theme 2: General principles of the Bill**

Reform of charity law has been on the Scottish Government’s agenda for some time. The Scottish Government considered that reform was needed, given that the legal framework had not been updated since the 2005 Act, and given that corresponding legislation in England and Wales had been updated since 2005.

The Scottish Government considers the Bill proposals to be "generally regulatory in nature as opposed to anything more fundamental about charities". The proposals are aimed at improving transparency and accountability in the charity sector and extending OSCR's powers so as to strengthen their regulatory role.

The **Methodist Church in Scotland** noted in their response that:

"Overall the Bill makes sensible proposals which result in safeguards for the sector and brings positive improvement to the existing regulatory regime."

In relation to the scope of the Bill, **CHAS** expressed some concerns and asked for reassurance on three specific areas:

- That initial implementation and/or ongoing operational costs will not be passed to charities.
- That detailed guidance is developed by OSCR in relation to implementation on ongoing operational requirements of the provisions.
- That any additional measures and powers bestowed on OSCR will be implemented in a proportionate and measured manner.

**Members may wish to ask:**

- 5. Do witnesses agree that the existing charity law needs to be updated?**
- 6. Do witnesses consider that there are weaknesses at present in relation to transparency and accountability in the charity sector?**
- 7. What are the views of panel members on the role of OSCR, the regulator for the charity sector? Does it operate effectively?**
- 8. Are the proposed extensions to OSCR's powers appropriate and proportionate?**

## **Theme 3: Information about charity trustees**

The Bill proposes that names of trustees are included on the public Scottish Charity Register. Charities and trustees will be able to request that names are withheld if there are safety or security concerns and OSCR will decide if such requests are accepted. If the charity or trustee disagrees with OSCR's decision, they will have the right to appeal the decision.

The Bill would also require OSCR to gather and keep up-to-date contact information on trustees for its own internal use. Charities will be required to inform OSCR when trustees change and provide updated details.

More detail on these provisions is available in the [SPICe briefing](#).

A number of witnesses expressed concerns around these proposals. **Edinburgh Rape Crisis Centre** noted that:

“We understand the necessity of transparency and accountability in the charity sector but in practice, the process for applying for dispensation of Trustees to ensure confidentiality and safety could place an increased administration burden on Trustees and charities. We support the establishment of a non-bureaucratic dispensation process.”

**Alzheimer Scotland** noted that 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:

“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 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.

**Members may wish to ask:**

- 9. Do witnesses have any concerns in relation to the proposals for OSCR to gather and maintain up-to-date information on charity trustees, and to include names of trustees on the public Scottish Charity Register?**
- 10. Does the publication of trustee names support transparency and accountability?**
- 11. Are there sufficient protections in the Bill for individuals who might want their names withheld?**
- 12. Will the maintenance of up-to-date information on charity trustees support more effective regulation by OSCR?**
- 13. What are the implications for charities in relation to their administrative functions, especially those charities that do not have paid staff, or smaller charities?**

## Theme 4: Publication of charity accounts

At present, all charities are required to submit annual accounts to OSCR. However, OSCR only publishes accounts on the Register for charities with annual income of £25,000 or more (and any personal information is redacted). [Note that if accounts are also published with Companies House, OSCR will link to these unredacted accounts]. Under the Bill's proposals, unredacted annual accounts would be published for all charities, regardless of size.

As with the publication of trustee names, there will be scope for charities to request that certain information is withheld from the published accounts where there might be security or safety concerns. Such requests will be considered by OSCR and charities will be able to request a review of these decisions if they are in disagreement.

If charities fail to submit annual accounts to OSCR and then subsequently fail to respond to subsequent communication from OSCR, the changes introduced by the Bill would mean that OSCR can remove them from the Scottish Charities Register.

More information on this aspect of the Bill can be found in the [relevant section of the SPICe briefing](#).

**Members may wish to ask:**

- 14. Do witnesses have any concerns with the proposal to publish unredacted accounts for all charities, regardless of size?**
- 15. Will the publication of accounts for all charities enhance transparency and accountability in the charity sector?**
- 16. Do witnesses agree that removing charitable status from organisations that fail to submit accounts is an appropriate measure?**

## Theme 5: Disqualification from being a charity trustee or holding a senior management position

The Bill updates the criteria for disqualification of trustees to bring them in line with the criteria in place in England and Wales. It would also extend these criteria so that they also apply to those holding senior management positions in charities.

In their submission, **Volunteer Scotland** felt that the extended criteria for disqualification could act to reduce further the existing lack of diversity among trustees and noted that other organisations had raised similar issues:

“In particular, the fact that undischarged bankruptcy prevents individuals from becoming a trustee will likely exclude a range of individuals from under-represented groups from participating – a point reinforced by other respondents including **SCVO** and **Scottish Women’s Aid**. With this in mind, we would ask that the Bill considers an appeals process similar to that for withholding personal details from the public register where personal circumstances are taken into consideration.”

**Edinburgh Rape Crisis Centre** noted some concerns around extending the criteria for disqualification of charity trustees to individuals with senior management positions, and in particular the extra administrative time and costs that might arise for charities due to the need to review recruitment processes and pre-employment checks:

“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.”

Under the Bill proposals, OSCR would also be required to maintain a record of those individuals who have been disqualified by the Court of Session from acting as a charity trustee. [Note, this record would not cover all disqualified trustees, just those who have been barred by the Court of Session.] This record would be searchable by name.

Further information on this aspect of the Bill can be found in the [relevant section of the SPICe briefing](#).

**Members may wish to ask:**

- 17. Do witnesses agree that it is sensible to have the same disqualification criteria in place across the UK?**
- 18. Do witnesses agree with the proposal to extend the disqualification criteria to those in senior management positions, and does this have any implications for recruitment procedures in your organisations?**
- 19. Is it appropriate for OSCR to maintain a publicly searchable record of trustees who have been disqualified by the Court of Session?**

## **Theme 6: OSCR inquiries**

The ability to undertake inquiries is an important aspect of OSCR’s regulatory and assurance role. Any individual can report a concern about a charity to OSCR. In 2021-22, a total of 563 concerns were raised with OSCR. Following assessment of

the issues, OSCR determined that an inquiry was appropriate for 60 of these cases. The 2005 Act that created OSCR requires it to act in a manner which is "proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed".

## Inquiries into former charities

The changes proposed by this Bill would allow OSCR to investigate former charities and their trustees. Under the current legislation, this is not possible, and inquiries can only be undertaken where the charity still exists. This raises the risk that trustees of charities that no longer exist could go on to act as trustees of other charities.

Further information on this aspect of the Bill can be found in the [relevant section of the SPICe briefing](#).

Members may wish to ask:

**20. Do you agree that OSCR's powers should be extended to allow them to undertake inquiries into former charities and their trustees?**

## Issuing positive directions following inquiries

At present, OSCR only has powers to issue *negative* directions following inquiries into charities. For example, OSCR can direct charities to stop doing certain activities. However, it cannot issue *positive* directions to charities requiring them to take certain actions, for example to remedy non-compliance. As in all areas of its activities, OSCR will be required to act in a proportionate manner when issuing directions. As with certain other direction-giving powers, this provision will not apply to Designated Religious Charities. Directions can only be issued following an inquiry by OSCR.

Further information on this aspect of the Bill can be found in the [relevant section of the SPICe briefing](#).

Members may wish to ask:

**21. Do you think that it is appropriate for OSCR to be able to issue positive directions following inquiry work?**

**22. Is it appropriate for Designated Religious Charities to be exempt from this provision (as is currently the case with other aspects of OSCR's direction-giving powers)?**

## Theme 7: Other miscellaneous issues

There are a number of further areas covered by the Bill, which include:

- Requirement for charities to demonstrate a connection with Scotland

- Power for OSCR to appoint interim charity trustees
- Requirement for OSCR to maintain a record of charity mergers

## Connection with Scotland

The Bill would introduce a requirement that charities registered on the Scottish Charities Register can demonstrate a connection with Scotland. OSCR will have the right to refuse entry on the Register to those unable to demonstrate a link, or require existing charities to take action to establish a link. Where an existing charity is directed to take measures to establish a link and fails to do so, OSCR will remove its charitable status. Charities will be able to appeal such decisions.

The proposals are not intended to exclude any charities operating in Scotland but benefiting those outside Scotland e.g. international aid charities. The presence of an office in Scotland and staff/trustees/volunteers resident in Scotland will represent a connection with Scotland.

Further information on this aspect of the Bill can be found in the [relevant section of the SPICe briefing](#).

**Members may wish to ask:**

**23. Do witnesses consider the requirement for charities to demonstrate a connection to Scotland to be an appropriate measure?**

## Appointment of interim charity trustees

Under the existing legislation, OSCR can appoint an interim charity trustee where this is requested by the charity. If passed, the Bill would allow OSCR to appoint interim trustees in situations where this is not requested by the charity itself. This would include situations, for example, where there are no trustees, or where they cannot be located, or are unwilling to act. This would allow OSCR to avoid costly court action to appoint a judicial factor and provide an easier route to protect charity assets.

Further information on this aspect of the Bill can be found in the [relevant section of the SPICe briefing](#).

In their submission, **Volunteer Scotland** noted:

“It remains unclear how OSCR would implement the power to appoint interim trustees in the event of a charity having no trustees or the existing trustees cannot be found or are unable or unwilling to act. As such, further information is required regarding how this recruitment would take place, and the provision that would be made to ensure that interim trustees have the skills and experience to work in the best interests of the charity.”

**Members may wish to ask:**

**24. Do you consider it appropriate to give OSCR powers to appoint interim trustees in specific circumstances where there are no trustees or they cannot be found, or are not willing to act?**

## Charity mergers

The Bill would require OSCR to keep a record of charity mergers, which would make it easier to ensure that legacies are preserved where these are made to a charity which subsequently merges with another charity and changes name.

Further information on this aspect of the Bill can be found in the [relevant section of the SPICe briefing](#).

**Members may wish to ask:**

**25. Do you agree with the proposal for OSCR to maintain a register of charity mergers, which would make it easier for legacies to be transferred in situations where the original legacy was made to a charity that has since merged and changed name?**

## Theme 8: Financial implications of the Bill

The Financial Memorandum (FM) for the Bill outlines estimated costs of between £0.6 million and £1 million across the first three years following implementation. Costs are expected to fall fully on the Scottish Administration (which includes OSCR), with no anticipated costs for local authorities.

The Scottish Government does not estimate that the Bill would require significant additional activity on the part of individual charities, so has not included any costs for these bodies in the Bill documents. However, as noted in the [SPICe briefing](#), even very minor additional costs could have an impact on smaller charities. Also, with over 25,000 charities in Scotland, even minor additional costs for each of these charities would imply a significant additional cost across the sector.

In their submission to the call for views, the **Church of Scotland** stated that:

“Any additional reporting obligation imposed by the Bill will directly increase the administrative burden for these charity trustees. A small charity with no administrative support may find this a greater burden than a large charity which can employ staff to ensure that reporting obligations are met.”

Many local authorities use Arm's Length External Organisations (ALEOs) to deliver certain activities such as leisure services. These ALEOs are often set up as charities. However, the FM notes that, as ALEOs are independent of local authorities, any costs associated with the Bill would fall to the ALEO and not the local authority. In its submission to the Committee's call for views, **Aberdeen City Council** noted that this fails to recognise that 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.

Further information on the Financial Memorandum can be found in the relevant section of the [SPICe briefing](#).

**Members may wish to ask:**

**26. Do witnesses agree that the Bill proposals will not result in any additional costs for local authorities or charities?**

**Nicola Hudson, Senior Analyst, SPICe Research  
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)