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STAGE 1 REPORT ON THE CHARITIES (REGULATION AND ADMINISTRATION) (SCOTLAND) BILL

Dear Convener,

Thank you for the constructive and helpful Stage 1 Report on the Charities (Regulation and Administration) (Scotland) Bill. It is clear that the Committee has carefully considered this complex, technical area and I am grateful for the comments and recommendations in the report. I am pleased that the Committee agreed to support the general principles of the Bill.

I have considered the points raised within the report and a response is attached as Annex A to this letter.

I note that some of the Committees recommendations and requests for information are directed to OSCR, rather than the Scottish Government. I understand that OSCR intend to write separately to the Committee on all those points.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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I would like to reassure the Committee that my officials are working closely with OSCR on communication and implementation planning for the Bill.

I hope the Committee finds this response helpful.

Yours sincerely,

SHIRLEY-ANNE SOMERVILLE

Scottish Government Response to the Stage 1 report on the Charities (Regulation and Administration) (Scotland) Bill

SCOTTISH GOVERNMENT'S CONSULTATION

27. We acknowledge the concerns of third sector stakeholders about the level of engagement the Scottish Government's consultations achieved. We believe it is unfortunate the second consultation process was interrupted by COVID-19 and that many charitable organisations had to prioritise their work over responding. Nonetheless, we expect the Scottish Government to learn lessons from this experience and ensure any wider review of charity law focuses on reaching a wider range of stakeholders and supports them to engage. We strongly suggest that the Scottish Government engage the third sector more directly, and early, and that they make specific efforts to reach small to medium organisations.

Response

The Committee's comment about consultation has been noted, as well as the recognition that the pandemic interrupted the process as it did to many public services. The proposals have been the subject of two, 12-week consultations, with a total of over 400 written responses, including responses from representative bodies responding on behalf of their membership. Responses showed strong support from the sector and stakeholders for these practical improvements to charity regulation, including those organisations which also called for wider reforms.

The Scottish Government is committed to ensuring future engagement with the sector, both as part of the implementation of the Bill and the proposed wider review of charity regulation, includes as broad a section of the sector as possible including small to medium organisations.

INFORMATION ABOUT CHARITY TRUSTEES

45. We consider the provisions strike the right balance between ensuring charity regulation is more transparent and protecting trustee anonymity in appropriate circumstances.

Response

The Scottish Government welcomes the Committee's support for provisions relating to information about charity trustees, and its recognition that these changes strike the right balance between increased transparency and trustee anonymity in appropriate circumstances.

DISQUALIFICATION FROM BEING A CHARITY TRUSTEE

88. It was clear to us that there is significant confusion surrounding undischarged bankruptcy as a disqualification criterion and believe that communication is needed from OSCR to clarify the regulation to the sector. We think this should be part of a wider communication piece that OSCR leads, to ensure the sector know the changes are coming, what they mean and how they will be applied. We think it is important that the burden of admin and delivery of the communications strategy for the changes is not on the third sector, that they should be involved, but not expected to be the communicator.

89. In terms of concerns related to the diversity of trustees and senior managers, we recognise the value those with lived experience can add to a particular organisation and therefore ask the Scottish Government and OSCR to ensure the waiver process is well understood by the sector and that any administration associated with it is kept as straightforward as possible.

90. We support the provision to extend the criteria for disqualification to senior management positions. Senior managers can have significant responsibility for charitable funds and running the organisation, and we consider it is the right thing to do in terms of transparency and accountability. It should also boost public confidence in the sector.

91. We are also of the view it is sensible for Scotland to align its disqualification criteria with the rest of the UK to enhance the sector's ability to carry out due diligence.

92. Similarly, we are supportive of the provision to create a publicly searchable record of disqualified trustees from the perspective of due diligence and are satisfied that OSCR will have sufficient information and processes in place to avoid cases of mistaken identity. Again, we recommend the Scottish Government and OSCR communicate with charities to ensure they are aware they can contact OSCR if there are any concerns relating to potential mistaken identity.

Response

The Scottish Government welcomes the Committee's support for the extension of the disqualification criteria to senior managers, alignment of the disqualification criteria with the rest of the UK, and the creation of a publicly searchable record of those who are permanently disqualified as trustees because they have been removed from office by the Court of Session.

We agree with the Committee's comments regarding OSCR communications on the disqualification and the waiver process. We have been assured that OSCR will write to the committee shortly providing as much information as possible and intends to provide more detail as the Bill progresses and as implementation begins.

APPOINTMENT OF INTERIM TRUSTEES BY OSCR

100. We are concerned by evidence taken around challenges in trustee recruitment and question how easy it will be for OSCR to appoint individuals willing to act on a temporary basis.

101. We ask OSCR to provide more information to the Committee on how it expects to be able to recruit interim trustees, and how often it believes it will need to do this. It would be helpful to have this information in advance of any Stage 2 consideration of the Bill. We would like to know if there will, for example, be a Scotland-wide panel of trustees to draw from.

102. We ask the Scottish Government to review whether this provision would benefit from a dispute mechanism to address potential issues regarding the appointment of interim trustees before any Stage 2 consideration.

Response

The Scottish Government will consider the Committee's recommendation regarding a dispute mechanism and will write separately on this prior to Stage 2. There are various factors that need to be considered in this area. For example, who would be eligible to raise a dispute? Another question is how a dispute mechanism might relate to the existing review and appeal mechanisms set out in the Charities and Trustee Investment (Scotland) Act 2005.

CHARITY ACCOUNTS

119. We acknowledge these provisions aim to improve transparency, accountability and public confidence and the Committee supports them.

120. OSCR have a procedure in place to deal with non-compliance and to support organisations to fulfil their reporting obligations. We are satisfied the process gives OSCR sufficient flexibility to take a nuanced approach in response to the individual circumstances of a breach.

Response

The Scottish Government welcomes the Committee's support for provisions relating to charity accounts.

CHARITY MERGERS

125. We ask the Scottish Government to examine the suggestion that lifetime gifts be addressed within the merger provisions for this Bill and provide us with an analysis of the benefits and disadvantages in advance of any Stage 2 consideration of the Bill.

Response

The Scottish Government is happy to examine this and will write separately to the Committee on the suggestion around lifetime gifts ahead of Stage 2.

ABILITY TO ISSUE POSITIVE DIRECTIONS

140. We are satisfied the provision to issue positive directions is appropriate and proportionate, however we ask the Scottish Government to confirm OSCR's guidance on the implementation of this section is clearly communicated to the sector to provide the reassurance required.

141. We acknowledge the diversity of opinion regarding exemptions for designated religious charities and recommend the Scottish Government ensures the issue is covered as part of the wider review.

Response

The Committee's comments regarding positive directions are noted. We will work with OSCR to ensure guidance on this new power is clearly communicated to the sector and that reassurance is provided.

The Scottish Government note the recommendation to include the exemptions for Designated Religious Charities as part of the wider review.

CHARITY CONNECTION TO SCOTLAND

149. We are satisfied that the sector has no major concerns on this section, however we ask OSCR to monitor its operation, so an informed decision can be taken on its effectiveness.

Response

The Scottish Government welcomes the Committee's support for the provision relating to charities having and maintaining a connection to Scotland.

DATA PROTECTION

156. We are content that there are unlikely to be issues regarding OSCR's handling of data based on its track record as set out in the evidence. However, given the changes the Bill will make, we believe it is important that safeguarding measures in place.

Response

The Committee's comments regarding data protection are noted. The importance of appropriate safeguarding measures has formed an ongoing part of the Scottish Government's considerations when developing the Bill. We believe that the provisions in the Bill, combined with OSCR's own data protection duties ensures these safeguards will be in place.

COMMUNICATING LEGISLATIVE CHANGES

176. While we appreciate many provisions in the Bill are updates to elements of the 2005 Act, it is clear the sector needs more information about what will be expected of them. Should the Bill be passed, we ask OSCR to share with the Committee its draft communication plan in advance of its engagement with the sector.

177. Regarding charities concerns about preparing for the changes in the Bill, we ask the Scottish Government to set out its plans for commencement of the Bill in advance of any Stage 2 consideration.

188. We appreciate that, given the number of small charities in Scotland, it would not be appropriate to have a threshold in place for reporting requirements as this would be counterproductive to increasing transparency and accountability, as well as impacting on public confidence in the sector.

189. We recognise the financial and administrative resources concerns the sector has expressed about the implementation of the Bill. We accept OSCR and the Scottish Government's reassurances that the proposed extension to the existing regulatory framework and additional obligations should not be too burdensome. However, we draw attention again to the need for extensive and effective communication with the sector.

190. We are reassured that OSCR will work with charities to support them if they are facing difficulties in meeting their obligations in relation to financial reporting.

191. Through the course of our work programme, we intend to scrutinise OSCR and will consider any resourcing issues at that time.

Response

The Scottish Government welcomes the Committee's agreement that including a threshold for reporting requirements would be counterproductive to increasing transparency and accountability.

The Scottish Government agrees effective and open communication with the sector is vital and is necessary to ensure smooth implementation of the Bill's provisions. We understand that OSCR will write directly to the Committee regarding the communications plan, and we would welcome any thoughts the committee may have on the plan.

OSCR is a Non-Ministerial Office (NMO) and is directly accountable to the Scottish Parliament, rather than Scottish Ministers. As such we welcome the Committee's scrutiny of OSCR as part of its future work programme.

The Scottish Government is currently working towards two phases of commencement should the Bill be passed, and Royal Assent obtained within expected timeframes, and will keep Parliament and relevant stakeholders informed.

Implementation planning with OSCR is already underway to ensure both charities and the regulator have sufficient time to prepare for and understand the changes. The timescales allow for phased commencement and time frames we are currently working towards are as follows:

Commencement regulations 1: Spring 2024

Straightforward provisions which require short lead in time with minimal impacts on charities and provisions and which will allow OSCR to prepare for more substantive provisions. For example, OSCR's ability to assess waiver applications prior to new disqualification criteria being in force (to ensure sufficient time for individuals caught by the new criteria to make an application to OSCR and for OSCR to properly consider it).

Commencement regulations 2: Summer 2025

Provisions that require system changes and more substantial communications work by OSCR, including the schedule of trustees, the record of mergers and the extension of the automatic disqualification criteria.