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25 March 2025

REVIEW OF CHARITY REGULATION

Dear Convener,

I last wrote to the Committee on this subject on 30 May 2024 following the launch of a public consultation to scope the purpose and parameters for a charity regulation review. 163 responses were received, and I am very grateful to all of those who took time to respond to our consultation and who joined the webinars hosted by my officials and key partners in the charity sector.

Data from all the responses and online events has been independently analysed and a report published today, a copy of which is included separately as an annex. Overall, the analysis shows strong support for a review with the most common reason being that it has now been 20 years since the Charities and Trustee Investment (Scotland) Act 2005 was introduced.

Many of the responses said that the review should be wide-ranging, independent of the Scottish Government and sector led. There were different opinions about what a review should cover and why one is needed. Therefore, it is right that time is taken to shape this work, and I am committed to working with the charity sector to refine the scope over the longer term.

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The Report also highlights practical changes charities want, many of which can be delivered without a review, and I am keen to make tangible progress on these now. For example, charities have made clear the challenges in the availability and affordability of auditors they are facing, citing the current audit income threshold level as too low. As such I intend to introduce new regulations in the autumn to raise the current threshold from £500,000 to £1 million, ensuring that the regulation and monitoring of charity accounts is proportionate.

The Committee will be interested to note that specifically on improvements to charity regulation we intend to:

1. Bring forward two further sets of commencement regulations to fully implement the Charities (Regulation and Administration) (Scotland) Act 2023, one in the summer and one at the end of 2025. This will enhance accountability and transparency in charities, which is a key finding from the consultation analysis.
2. Introduce new Charities Accounts (Scotland) Regulations in the autumn to address those long held concerns about the audit income threshold for charities registered in Scotland.
3. Consult on draft regulations to make improvements to the Scottish Charitable Incorporated Organisations (Removal from Register and Dissolution) Regulations 2011, with a view to introducing amendment regulations before the end of the Parliament. The draft regulations are based on recommendations from an independent working group and substantial stakeholder feedback.
4. Convene a working group to examine the challenges some charities face can when looking to incorporate to a Scottish Charitable Incorporated Organisation (SCIO).

This is in addition to our Fairer Funding pilot which will see more than £60 million per year in FY25/26 and 26/27 for third sector organisations delivering front line services and tackling child poverty. The Pilot is the first step in mainstreaming multi-year funding agreements more widely. The Scottish Government is also committed to improving the clarity and consistency of all third sector grants, as well as timely notification of grant offers.

We also recognise that organisations are concerned about volunteer shortages and the recent decline in formal volunteering. We are responding to the challenges faced by charities to find volunteers and keep up with increasing demand for their services, through the National Volunteer Recruitment Campaign led by Volunteer Scotland and our continued investment in the backbone infrastructure to support the sector. This includes the continuation of the Volunteering Support Fund which supports inclusive volunteering in grassroots volunteer organisations.

I hope the Committee finds this information helpful.

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Yours Sincerely,

SHIRLEY-ANNE SOMERVILLE

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Consultation on a Review of Charity Regulation

Analysis of Responses

Final Report

March 2025

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Executive Summary

A [public consultation on a review of charity regulation](#) ran from 29 April to 22 July 2024, based on a Scottish Government commitment to work with stakeholders to develop the scope of a potential review. The consultation sought views on whether there needs to be a review of charity regulation and, if so, what the purpose and parameters of a review should be. In total, 163 responses were received¹, 80 of which were from organisations and 83 from individuals. The analysis also included notes collated from nine consultation events.

Purpose of a review

A majority of respondents (83%) agreed that there should be a review of charity regulation, while 8% disagreed and 9% were unsure. Most prevalent in open comments was the view that a review would be timely, though other reasons for support included concerns about charity governance or a need to strengthen existing regulations or reduce complexity. Reasons for supporting any review included increasing confidence in charity leadership, ensuring organisational structures were correct, enabling the provision of clearer guidance, and emphasising the need for regular reviews. Conversely, many respondents left comments to suggest there was no need to conduct a review at this time or that there could be challenges associated with a review, such as the other demands on the charity sector potentially resulting in an 'implementation gap'.

Just over half of respondents (54%) preferred any review to focus on assessing the effectiveness of current charity regulation in meeting the sector's future needs, for instance, to ensure regulation is fit for purpose in the future and that it can address current challenges in the sector. However, over a quarter of respondents (28%) felt the primary reason for a review should be to review the Charities and Trustee Investment (Scotland) Act 2005, again, with the primary reason being to ensure regulation is fit for purpose. Other reasons were suggested by many respondents, the most prevalent of which was that both of these options should be included in any review. Respondents who chose 'other' felt the scope of the review would need to be carefully considered. While there were calls for the review to be comprehensive, concerns were also expressed, such as the potential for a review to become time-consuming or costly.

70% of respondents indicated that they or their organisation will have the capacity to contribute to a review process in the next 12 months. While 9% of respondents felt they would not, one in five (21%) were unsure. Many respondents indicated in their comments that they would contribute to a review or welcomed the opportunity to do so. However, capacity issues were highlighted as having the potential to impact an ability to contribute, particularly among smaller organisations.

Parameters for a review

Respondents were initially asked two open questions to explore which topics they felt should or should not be included in any review. Many respondents raised the topics that would be addressed by the technical workstreams (see below). Beyond these topics, the most prevalent topics that respondents felt should be included in a review were aspects of

¹ Following data quality checks, two duplicate responses were removed. The figure of 163 also includes separate responses from two individuals within the same organisation.

charity governance and trustee roles and responsibilities, finance and the need to simplify regulation. Suggested financial aspects to include were wide-ranging and included simplifying accounting requirements, fundraising and charitable trading, financial and asset management and use, tax requirements, and application of endowments. Many respondents felt strengthening and simplifying regulatory requirements or reviewing the role and powers of OSCR should be included. Other less frequently suggested topics included the charity test (public benefit and charitable purposes), organisational structures and becoming a charity, constitutions, activity reporting, trustee motivation and recruitment, and how to increase public trust in charities.

When asked to consider what should not be included in any review of charity regulation, the most prevalent theme was that the review should be wide-ranging or that nothing should be excluded. Thereafter, themes covered the charity test, recent regulation changes, or specific suggestions on what to exclude. Some respondents suggested anything covered in recent consultations should be excluded from any review. Several respondents made recommendations to exclude certain aspects of regulation, for example, the guidelines for financial accounting and reporting. A few respondents cautioned against aspects of any review that might add further complication or burden to charity regulation.

In response to three specific topics highlighted in the consultation paper, around half of those answering felt these should be included. In order of prevalence, agreement was recorded for reviewing charity trustee duties (69%), public benefit (57%) and charitable purposes (54%). Beyond these topics, respondents highlighted other areas that could be included in any review of charity regulation. These included safeguarding and disclosures for staff and volunteers, accountability structures for staff, discrimination against staff, and employee benefits, each mentioned by some respondents. Some others also mentioned the need for strengthened regulation.

Technical areas

On three suggested technical workstreams, the highest support was recorded for reviewing the audit threshold, with three quarters (75%) of those answering agreeing this should be taken forward. In open comments, it was suggested the current audit threshold of £500,000 was set too low and was a disproportionate burden for smaller charities. Calls were made for this to be aligned with other regulatory bodies and to allow exemptions for those who temporarily breached the threshold. Less support was expressed for technical workstreams on incorporation to a Scottish Charitable Incorporated Organisation (SCIO) and reorganisation of statutory and Royal charter charities, with 57% and 51%, respectively, in favour. However, for these two topics, around a third of those who responded were unsure if these should constitute technical workstreams.

Other considerations and suggestions for how the Scottish Government should proceed with any review included ensuring that it is based on objective criteria, that there is consultation with the sector, that it is completed within the current Parliamentary term, and that recommendations are taken forward.

Introduction

Background

In 2019 the Scottish Government ran a [consultation](#) about proposals the Scottish Charity Regulator (OSCR) had made on improvements to the [Charities and Trustee Investment \(Scotland\) Act 2005 \("the 2005 Act"\)](#), which originally established the current regulatory regime for charities in Scotland to support the charity sector and to safeguard the public interest in relation to charities. A Bill was introduced in Parliament in November 2022 to strengthen and update the legislative framework for charities registered in Scotland and the [Charities \(Regulation and Administration\) \(Scotland\) Act 2023 \("the 2023 Act"\)](#) received Royal Assent in August 2023. In response to the 2019 consultation, the consultation for the Bill and in evidence sessions during the Bill's passage, some people responded that they wanted a wider review of charity regulation.

During the passage of the 2023 Act, the Cabinet Secretary for Social Justice committed to looking at a wider review of charity regulation in recognition of stakeholder feedback on matters outwith the Bill. In the [Programme for Government 2023 to 2024](#) the Scottish Government committed to 'work with the third sector and partners to develop the scope for a wider review of charity regulation.'

A [public consultation on a review of charity regulation](#) ran from 29 April to 22 July 2024. The consultation sought stakeholders' views on whether there needs to be a review of charity regulation, and if so what the purpose and parameters of a review should be. This consultation asked 10 short questions about a review and was split into three sections:

- The need for a review and the purpose of a review
- The parameters for a review - What should it cover and not cover?
- Technical areas for review

The analysis of responses set out in this report will be used to inform next steps.

Respondent profile

In total, 163 consultation responses were received². Most were submitted via the online consultation platform, Citizen Space. Those received in an alternative format, for example, an email or PDF document, were reviewed separately by the research team.

Individuals provided 83 responses to the consultation; the remaining 80 responses were from organisations. To aid analysis, organisations were grouped on the nature of their work. Table 1 shows the profile of respondents.

A few faith-based organisations used similar wording in elements of their response. However, this is often the case where a respondent shares or endorses the same views as an organisation which has made its response public before the consultation closes. Each of these responses has been treated as a separate response in the analysis.

² Following data quality checks, two duplicate responses were removed. The figure of 163 also includes separate responses from two individuals within the same organisation.

Table 1: Respondent profile

Audience	Number of respondents	% of total sample
Individuals	83	51%
Organisations:	80	49%
- Charity	47	29%
- Umbrella, infrastructure and membership bodies	18	11%
- Professional advisors (inc. legal/financial)	13	8%
- Other	2	1%

Respondents who were responding on behalf of a charity were also asked to indicate their charity's income for last year. This was included to understand the size profile of charities responding to the consultation. As well as most charities, some other organisations answered this question. Table 2 shows the income profile among charities and umbrella bodies, and among the total sample.

Table 2: Income profile

	Among charities and umbrella / infrastructure / membership bodies (n=65)	
Income band	Number	%
Not Known	4	6%
£0 to £5,000	1	2%
£5,000 to £9,999	0	0%
£10,000 to £24,999	1	2%
£25,000 to £49,999	3	5%
£50,000 to £99,999	1	2%
£100,000 to £249,999	4	6%
£250,000 to £499,999	6	9%
£500,000 to £999,999	10	15%
£1m to £10m	21	32%
£10m+	7	11%
Not answered	7	11%

Consultation events

The analysis also included notes collated from nine consultation events.

These included two Scottish Government webinars open to anyone, two Scottish Council for Voluntary Organisations (SCVO) webinars, and events hosted with the Third Sector Interface Network, the Scottish Churches Committee, the Law Society of Scotland Charity Law Sub-Committee, the Association of Chartered Certified Accountants (ACCA) and Social Enterprise Scotland. All the webinars followed a similar structure and were based

on the consultation paper questions, with attendees representing a range of stakeholders in the sector, including charities, professional advisors, membership and umbrella bodies.

Analysis approach

The Lines Between was commissioned to provide a robust, independent analysis of the responses to the public consultation. The main purpose of consultation analysis is to understand the full range of views expressed and, where possible, using closed questions, to quantify how many respondents hold particular views. This report provides a thematic analysis of responses based on the analysis approach outlined below.

Some respondents, especially organisations, shared lengthy submissions reflecting their specific subject matter expertise. The report references these responses where possible. Full responses to the consultation, where permission for publication was granted, can be found on the [Scottish Government's consultation website](#).

Quantitative analysis

The consultation included nine closed questions which asked respondents for their views on the possible approaches set out in the consultation paper. Not all respondents answered every question. However, where those who did not answer the closed questions expressed a view in their open comments; this has been noted in the qualitative analysis.

To allow comparisons across sub-groups, the tables in this report and appendix present the results of the closed questions **based on those who answered each question**. For clarity, each table shows:

- The percentage of respondents **from the total sample** of 163 respondents who selected each response (grey row).
- The percentage of respondents **among those who answered each question**, broken down by individual and organisation responses and by type of organisation (rows including and under "All answering").
- The sample size column notes how many respondents within each audience answered each question.

Please note that the row percentages may not add to 100% due to rounding.

Qualitative analysis

Qualitative analysis identifies the key themes across responses to each question. The research team developed a draft coding framework based on a review of the consultation questions and a sample of responses. During the coding process, new codes were created if additional themes emerged.

When reviewing the qualitative analysis in this report, we would ask the reader to consider the following:

- Public consultations invite everyone to express their views; individuals and organisations interested in the topic are more likely to respond than those without a direct or known interest. **This self-selection means the views of respondents do**

not necessarily represent the views of the population, or everyone with an interest in this topic.

- Where differences between the views of individuals and organisations were evident in qualitative responses, these have been noted. If no specific differences are highlighted then a theme was raised by a mix of respondents.
- Some issues or suggestions were raised at multiple questions, regardless of the focus of the question. While this report includes all views, analysts judged the most relevant place to include each theme to minimise repetition.
- In a few instances where a response received via email or in a PDF document contained information that did not align with specific questions, analysts judged the most relevant place to include this material for analysis purposes.
- Notes from the consultation events were reviewed to identify where there were similarities with the themes evident in the formal consultation responses or to identify any new themes or any differences in opinion compared to the consultation responses. The themes evident in the events typically aligned with those evident in the main sample, but any additional or unique perspectives are noted in this report.
- Quotes from the consultation responses have been used to illustrate key points and provide useful examples, insights and contextual information. Quotes have only been used where a respondent gave permission for their response to be published.

Weight of opinion

This report presents the themes identified in responses from most to least commonly mentioned. All themes, including views shared by small numbers of respondents, are covered; a view expressed by a very small number of participants is not given less weight than more general comments shared by a majority.

Similarly, all responses have an equal weighting. We recognise this means a response from an individual has the same weight as the response from an organisation which may represent many members, but this approach ensures all views are presented.

To assist the reader in interpreting the findings, a framework is used to convey the most to least commonly identified themes in responses to each question:

- The most/second most common/prevalent theme; most frequently identified.
- Many respondents, 20 or more respondents, a prevalent theme.
- Several respondents, between 10 and 19 respondents, a recurring theme.
- Some respondents, between 5 and 9 respondents, another theme.
- A few / a small number, fewer than 5 respondents, a less common theme.
- Two/one respondent; a singular comment or a view identified in only one or two responses.

Chapter 1: Purpose of a review

This chapter presents the analysis of four questions which asked stakeholders whether there should be a review of charity regulation, what its purpose should be, and whether stakeholders felt they would have the capacity to contribute to the review.

Q1. Should there be a review of charity regulation?

Audience	Sample size (n=)	% Yes	% No	% Don't know	% No answer
All respondents	163	80	8	9	4
All answering	157	83	8	9	-
Individuals	82	80	11	9	-
Organisations:	75	85	5	9	-
- Charity	46	83	7	11	-
- Umbrella, infrastructure and membership bodies	16	88	0	13	-
- Professional advisors (inc. legal/financial)	11	100	0	0	-
- Other	2	50	50	0	-

Over four fifths (83%) of those answering Q1 agreed that there should be a review of charity regulation, while 8% disagreed and 9% were unsure. Similarly high levels of agreement were recorded by both individual respondents (80%) and organisations (85%), and by most types of organisations, including 83% of charities.

Q2. Please explain why you think there should or should not be a review of charity regulation.

Over 80% of respondents answered Q2, with the majority of comments indicating support for a review of charity regulation. Most prevalent was a theme that it is time for a review, though other reasons included concerns about charity governance or a need to strengthen regulation or reduce complexity. Reasons supporting a review of regulation are given first, followed by reasons for not supporting a review, for ease of reading.

Yes, a policy review would be timely

Most prevalent was the theme, raised by many respondents, that a review of charity regulation would be timely. Reasons for this included that current legislation had been in place for some time and it would be sensible, therefore, to undertake a review, or that amendments or updates were required to ensure it is fit for purpose moving forward.

Changes in charities' operating environments were highlighted, such as the impact of the pandemic, increasing funding constraints and rising costs, technological advances, the complexity of compliance, and high-profile cases that had impacted public confidence in charities. It was felt that robust regulation could support charities to address these issues.

“The dynamic nature of the charitable sector, with evolving challenges such as digital fundraising, AI and economic issues, necessitates a regulatory framework that remains relevant. A review will also help promote best practices, balancing necessary oversight with the support charities need to operate effectively. Protecting beneficiaries and ensuring financial sustainability are critical aspects of effective regulation. As the sector grows in number and diversity, regulatory adaptations are crucial to manage increasing complexity. Aligning with international standards and addressing technological advances, such as cybersecurity and online transparency, are also important.” – Aberdeenshire Voluntary Action Third Sector Interface (TSI) and Aberdeen Council of Voluntary Organisations TSI

Yes, to address charity governance

Many respondents also advocated for a review due to concerns over how charities are governed, with some illustrating this point based on their personal experience or perspective. The most common concerns were those related to transparency and accountability of charities. Other issues raised included how operational challenges faced by charity boards, such as those noted above, are handled, views that specific charities are accumulating significant wealth, the perceived proliferation of charities, and concerns about the quality of management boards. This latter concern is described in more detail in Q5.

“With many current challenges charities are facing, this review should ensure that charities continue to operate with transparency and accountability.” – Individual

Yes, to address financial aspects

Consideration of finance related aspects of charities was raised by many respondents, with some calling for a review of the audit threshold (see Q9C). Other aspects of finance mentioned by respondents included:

- A call for audit to only be required for income generated by charities, not restricted funding.
- Introducing a duty and right for auditors and independent examiners to report to the regulator.
- Establishing Scottish charity accounting regulations.
- Clarifying who can act as an examiner for charity accounts and if they require specific qualifications.

Q5 also provides further detail on financial aspects that respondents felt should be covered in any review.

Yes, general agreement

Comments generally endorsing the need for a review were given by many respondents. Reasons included to increase confidence in leadership, to ensure organisational structures were correct, to enable provision of clearer guidance, and a need for regular reviews to be conducted (see Q3 for more detail on the final point).

“Regular reviews ensure that charities remain accountable and transparent in their operations. This helps maintain public trust and confidence. Reviewing regulations can help identify and close loopholes that may be exploited for fraudulent activities.” – Stirlingshire Voluntary Enterprise (SVE)

Yes, need to strengthen regulation

Several respondents felt a review should occur to strengthen charity regulation. Respondents often raised this in relation to the need to consider the quality of charity governance. Concerns around current regulations included that they did little to improve transparency over issues such as major influences acting on charities, such as who any key donations are from and how fundraising money is spent. Perceptions of a lack of intervention by OSCR or that it was not effective in cases where concerns were raised were also noted. One respondent referred to a lack of regulation of social enterprises.

“To strengthen and enhance the role of OSCR we think it is important that the charity regulator has sufficient powers to intervene and deal with concerns and, that where required, it uses its powers and has the power to enforce where a charitable organisation is not adhering to its legal obligations.” – LifeCare Edinburgh

Yes, to simplify or reduce bureaucracy

The need for a review to simplify or reduce the burden of regulatory compliance was emphasised by several respondents. The volume of requirements on small charities or groups was highlighted as problematic, particularly where there was an absence of paid employees. Costs associated with regulatory compliance, complex processes, and the need to free up time to focus on delivery were all noted as issues. Respondents highlighted administrative burdens experienced in ensuring compliance; for instance, one respondent felt the requirements on small charities were onerous, particularly if they wished to change their constitutions or wind up. An organisation called Peace and Justice called for simpler, more transparent processes to facilitate compliance. Attendees at the Social Enterprise Scotland event highlighted the number of relevant regulators, such as the Office of the Regulator of Community Interest Companies and the Scottish Housing Regulator, and the potential for overlap between them.

“We are particularly concerned to ensure that any regulatory regime is preventative and proportionate. This is particularly important in a sector where many charities are subject to other regulatory regimes. It is also important to consider the fact that there are a number of very small organisations working in their local communities where regulation could become a burden.” – Children in Scotland

A few respondents suggested priority areas to consider in any review, and these views are incorporated into the analysis of responses to Q5.

No, do not conduct a review

Many respondents left comments to suggest there was no need to conduct a review at this time or that there could be challenges associated with a review. The majority of these respondents selected ‘no’ or ‘don’t know’ in Q1. For instance, the scale of ambitious

policies being issued by the Scottish Government was felt to be resulting in an implementation gap, with the third sector “feeling overstretched and fragile”. However, these reasons were also noted by two, Children in Scotland and an individual, who supported a review.

A preference for the status quo was also identified by respondents, with reasons including that the current system was working, that stability was needed, that there were more pressing matters to consider or that the time or public money could be better spent.

“We note that further consultation could add to the burden on the sector, at a time when previous reforms are still bedding in.” – Royal Incorporation of Architects in Scotland

Q3. If a review of charity regulation is undertaken, which of the following should be the purpose of the review (choose one):

Option 1: To assess the effectiveness of current charity regulation in meeting the future needs of the sector.

Option 2: To review the Charities and Trustee Investment (Scotland) Act 2005 - exploring if the Act is doing what it set out to do and if any changes are required.

Other – please specify.

Audience	Sample size (n=)	% Option 1	% Option 2	% Other	% Don't know	% No answer
All respondents	163	51	26	12	6	5
All answering	155	54	28	12	6	-
Individuals	82	56	30	10	4	-
Organisations:	73	51	25	15	10	-
- Charity	46	37	37	13	13	-
- Umbrella, infrastructure and membership bodies	15	80	7	7	7	-
- Professional advisors (inc. legal/financial)	11	64	0	36	0	-
- Other	1	100	0	0	0	-

Among respondents answering Q3, Option 1 was the preferred option for the review's purpose: to assess the effectiveness of current charity regulation in meeting the sector's future needs. This was favoured by half of respondents (54%), while Option 2 was supported by 28%, and 12% were unsure. An alternative focus was favoured by 12% of respondents.

Preferences were broadly similar between responses from individuals and organisations, with 56% and 51% respectively supporting Option 1 and 30% and 25% respectively favouring Option 2. However, organisations were more likely than individuals to suggest an alternative approach (15% compared to 10% respectively) or be unsure (10% compared to 4%).

Some differences in opinion were also evident by type of organisation that responded. While 80% of umbrella, infrastructure, and membership bodies and 64% of professional advisors preferred Option 1, preferences among charities were evenly split, with 37% preferring each of Option 1 and Option 2.

Over 40% of all respondents left an open comment to explain their answer to Q3. However, comments were not solely made by those who chose 'other' as an option; many respondents who selected Options 1 or 2 in the closed questions elaborated on why they did so. In line with the closed question results, the most prevalent theme in open comments was to explain the reasons why they believed the review should assess the effectiveness of current charity regulation (i.e. Option 1). The next most common theme was a range of reasons for selecting the 'other' option, but this included some respondents calling for both Options 1 and 2 to be included.

To assess the effectiveness of current charity regulation

Many respondents left comments to explain why they chose this option. The main reasons given were to ensure regulation is fit for purpose in the future and that it can address current challenges in the sector.

"With increasing demand on charities and inflation eroding the value of the available funding, it is vital that charities are as effective as they can be - socially, financially and in governance terms. The sector is changing and will continue to change, with the demographic shift and changing expectations. Does the current regulation support the changing world they operate in?" – Individual

'Other' reasons

Many respondents left comments on why they had chosen 'other' as an option. The most prevalent view, expressed by almost half of these respondents, was that both options should be considered as part of a review. A few respondents in this theme had selected Options 1 or 2 at the closed question but then used the 'other' comment box to call for both to be included in the review.

“SCVO has long called for a comprehensive, holistic, independent review of charity regulation, with an extensive scope informed by voluntary organisations. With that in mind, we are unsure why any review would focus on either assessing the effectiveness of current charity regulation in meeting the future needs of the sector or reviewing the Charities and Trustee Investment (Scotland) Act 2005 to explore if the Act is doing what it set out to do and if any changes are required. It would be our contention that, if any review is to be truly comprehensive, it should be both considering whether the 2005 Act requires updating, while also assessing current charity regulation and its effectiveness in meeting the sector’s future needs. We do not see these as in opposition but, instead, aspects that should both be included.” – SCVO

“To be honest why is this an either or? Given the stress the charitable sector is under they both should be examined to see they are fit for purpose to get the very best out of the sector.” – Broadford and Strath Community Company

Similarly, some respondents who chose ‘other’ felt the scope of the review would need to be carefully considered. While there were calls for the review to be comprehensive, concerns were also expressed, such as the potential for a review to become time-consuming or costly, for incorrect assumptions to be made about the future needs of charities, or that the review parameters could rule out issues that could only be tackled by primary legislation.

“We think it is important that the parameters of a wider review do not rule out issues which could only be tackled by primary legislation, even if that primary legislation would not be forthcoming in the short term. Equally, it is important that the parameters of the review do not exclude topics which it would be difficult to take forward solely on timing grounds. Even if the review has to capture ideas which can only be taken forward in a later session of the Scottish Parliament, gathering those themes from the sector is likely to be beneficial in the longer term, provided that they are ultimately acted upon.” – Charity Law Association

Some of those who commented felt a review was not needed, though half of the respondents who made this point selected one of the two possible options in Q3. These latter respondents felt the case for a review would need to be made.

To review the 2005 Act

Reasons for selecting this option as the purpose of a review were also given by several respondents. Again, the primary reason was to ensure regulation is fit for purpose, though two respondents also chose this option to identify additional changes needed, such as to NHS charities, and two respondents felt regular policy review was necessary.

Q4. Do you think you or your organisation will have capacity to contribute views to a review process in the next 12 months?

Audience	Sample size (n=)	% Yes	% No	% Don't know	% No answer
All respondents	163	67	9	20	3
All answering	158	70	9	21	-
Individuals	83	64	13	23	-
Organisations:	75	76	5	19	-
- Charity	46	74	4	22	-
- Umbrella, infrastructure and membership bodies	16	88	0	13	-
- Professional advisors (inc. legal/financial)	11	82	0	18	-
- Other	2	0	100	0	-

70% of respondents answering Q4 indicated that they or their organisation will have the capacity to contribute views to a review process in the next 12 months. While 9% of respondents felt they would not, 21% were unsure. Three quarters (76%) of organisations felt they would have capacity, with 19% of the remainder unsure. Individuals were slightly less certain about their ability to contribute, with 64% indicating they would, 13% that they would not and 23% unsure.

In line with the quantitative results, comments typically indicated respondents would be able to contribute to a review, though others were not sure or did not feel they would have the capacity to contribute. Several respondents also indicated that they would like to respond as individuals.

Yes, will contribute to a review

Many respondents indicated they would contribute to a review or welcomed the opportunity to do so. All organisations in this theme were on an income of £250,000 per annum or greater, with five being umbrella organisations. An individual also indicated they would ask the 80 plus small, constituted groups that were not registered charities, in their network, though it was unclear which organisation they were linked to.

“As a membership organisation, Social Enterprise Scotland represents a wide diversity of social enterprises, from registered charities to SCIOs, Community Interest Companies (CICs), social housing providers, cooperatives and other business models, as well as public and private sector members. We’re happy to inform a review by providing evidence and information, attending events and stakeholder meetings, consulting our members, hosting webinars, sharing surveys and more.” – Social Enterprise Scotland

While SCVO highlighted there could be capacity issues for smaller charities, it took the view that a review could benefit smaller organisations and therefore should proceed:

“In advance of the 2023 regulations, when the sector was still struggling with the impact of the pandemic, we took the view that it was not the right time for a wider review given capacity in the sector. Since then, however, it has become clear that the difficult situation voluntary organisations find themselves in is likely to continue. There is therefore no perfect time to review charity regulation. Additionally, the potential improvements and positive steps that could result from a comprehensive review of charity regulation could go great lengths to alleviating some of those burdens.” – SCVO

Challenges associated with contributing to a review

Challenges in contributing to a review, or hesitation to contribute, were evident among several respondents. Factors cited as impacting on an ability to contribute included prevailing societal and economic conditions creating capacity issues, as well as resource and time constraints. The size of organisations did not appear to impact such a view; organisations with both small and large income levels raised this point.

“Here the answer is really yes, but. We are a membership organisation and work closely with a much wider sector. We know how important a review could be for our membership, and therefore would contribute. However, one caveat is that we are very overstretched at the moment because of the current economic situation and therefore we would have to ensure that we could use our limited resource in the most strategic way.” – Children in Scotland

However, some respondents did comment that the small size of organisations would likely constrain their ability to contribute. Capacity concerns, or the amount of time needed to input, were most commonly mentioned in this theme. Two respondents felt their organisation may not exist in a year due to funding challenges, while two other organisations indicated the parameters of the review would determine participation. One individual suggested holding the review in stages, with the first asking limited questions and the second allowing for more detailed comments as a way to encourage participation.

“As a small charity, our resources are very limited - we want to focus on the delivery of our outcomes.” – Individual

Would wish to contribute as an individual

Several respondents indicated they would like to contribute as individuals. One respondent indicated they were a trustee of several charities and would like to contribute, while another respondent said they would be happy to take part if changes were implemented following feedback.

“As an individual, I would want to do so myself as well.” – Individual

“I work as part of the Third Sector Interface so I am dealing with topics such as this often. I would be happy to contribute further views if it would be at all helpful.” – Individual

Chapter 2: Parameters for a review

This chapter presents the analysis of six questions which explored the potential parameters of the review, including what topics it should cover and which aspects of regulation should be included. Q7 comprised three closed questions, which asked whether three aspects of charity regulation should be reviewed. Any open comments about these aspects have been presented under Q5 and Q6, where those comments were raised.

Q5. If a review of charity regulation is conducted, what topics should it cover and why?

Nearly four fifths (78%) of respondents answered Q5. Many respondents raised the topics that would be addressed by the technical workstreams. These are addressed in Chapter 3. Beyond these topics, the most prevalent themes that respondents felt should be included in a review were aspects of charity governance, finance and the need to simplify regulation.

Charity governance and trustees

Most prevalent was a theme, raised by many respondents, that the governance of charities, including trustee roles and responsibilities, should be included in the review. Several respondents specifically mentioned the need to review governance arrangements. Aspects mentioned in this regard included governance structures, accountability, transparency, conflicts of interest and leadership. One respondent called for the requirement to hold annual members' meetings in single-tier SCIOs to be removed. Age Scotland called for it to be easier for small groups with limited incomes to gain access to legal advice and support. They suggested OSCR work with the Law Society of Scotland to consider what protections could be offered to such groups and their trustees in case of personal legal action. Similarly, attendees at a SCVO webinar queried if the review would cover liabilities of trustees for unincorporated organisations.

Aberdeenshire Voluntary Action TSI and Aberdeen Council of Voluntary Organisations TSI called for greater scrutiny of charitable status for public sector bodies, particularly Arms Length External Organisations (ALEOs), with an individual calling for a review of the role of Councillors on ALEOs and their relationship with Councils. One individual felt community development trusts should be subject to greater scrutiny.

Trustee roles and responsibilities were commonly mentioned in this theme. Specific aspects highlighted included:

- Having greater clarity on roles and responsibilities such as through having codes of conduct or detailed guidance.
- Declaration of interests.
- Trustee wellbeing, such as not being overburdened with responsibility, how private and public benefits are balanced, health and safety awareness, and how regulation supports a human rights approach.
- Trustees being aware of their responsibilities and appropriate behaviours.
- Improvements in recruitment, training and possibly requiring qualifications.

- Rules on remuneration.
- Clarifying what is meant by ‘acting in the best interests’ of the charity.

Attendees at the Law Society of Scotland Charity Law Sub-committee event suggested reviewing Section 66 of the 2005 Act, which sets out the general duty of care that charity trustees must follow. They highlighted this was different from company law and Trust law and called for alignment between these.

A few respondents, as well as attendees at various consultation events, felt increasing burdens placed on volunteers, particularly in the absence of paid staff, were impacting motivations to volunteer as a trustee. Attendees at a Scottish Government hosted webinar suggested that easing trustee duties could make the role more attractive. Volunteer Scotland highlighted that while the 2023 Act aimed to increase transparency and accountability, the requirement to publish the names of trustees could be off-putting, impacting potential willingness to serve as a trustee.

A few respondents highlighted the need to consider trustee diversity and how to improve this. For instance, those attending a SCVO webinar noted challenges in recruiting those with lived experience. Two respondents suggested that the role of founders in charities could be considered in any review focused on charity governance regulation. One respondent suggested charities with active founders should be required to have succession, or exit, plans in place in case the founder leaves. Attendees at a Scottish Government hosted webinar felt that charities should have at least one trustee based in Scotland if they had a Scottish charity number to increase transparency and accountability.

“Trustee recruitment, remuneration and diversity. Many charities struggle to recruit trustees with the necessary skills, experience and knowledge. Trustee diversity is particularly important, and many charities are looking to appoint board members who have lived experience of the issues that the charity exists to address. Under specific conditions and with the appropriate guardrails, remunerating trustees can be an effective means (one of many) to open up charity boards to more diverse trustees. The charity sector in Scotland needs more support – and more flexibility – to recruit from a wider pool of talented potential trustees.” – The Chartered Governance Institute UK & Ireland

“The roles and responsibilities of trustees - I am not confident that I know what my role is as a trustee.” – Individual

Charity finances

Aside from the audit issue raised in Chapter 3, many respondents indicated that financial issues should be included in any review of charity regulation. Views on what to include were wide-ranging and included:

- Investment portfolios.
- Reserves.
- Tax requirements and tax cuts.
- Receipts and payments accounts.
- Clarification of any qualifications required of independent examiners.

- Making accounting easier.
- Fundraising and charitable trading, including salaries of fundraisers.
- Financial and asset management.
- The Charities Statement of Recommended Practice (SORP) requirements (i.e. guidelines for accounting and reporting).
- The use and application of endowments.

A few respondents felt there should be a review of the Charities Accounts (Scotland) Regulations 2006 (as amended), for instance, to align requirements of companies with charities or to allow OSCR to issue a framework of directions to independent examiners as applies in other parts of the UK.

One respondent called for a simplification of the accounts charities are required to submit, suggesting a return to straightforward 'income and expenditure' reporting for small charities with an income of under £50,000 and assets of under £100,000. One event attendee suggested introducing a minimum income threshold for charity registration to help reduce the administrative and financial burden on smaller charities, suggesting such a threshold could be similar to that set by the Charity Commission for England and Wales, which requires a charitable body to have an income of at least £5,000 to be registered.

The Institute of Chartered Accountants of Scotland (ICAS) provided detailed comments on financial aspects requiring consideration, and readers are advised to refer to their published response for further information on these suggestions, for instance, on inconsistencies between accounting regulations and the 2005 Act in the scope of 'statement of account'.

Challenges accessing financial expertise or bank accounts were raised by a few respondents, such as difficulties finding a suitable accountancy firm, auditors and independent examiners, or banks with affordable fee structures and timely action. This was also raised by attendees at various consultation events. One individual respondent, whose main area of work was charity accounting, perceived audit firms as preferring to prioritise organisations with larger incomes, and quoting 'vastly inflated' fees or being unwilling to give a quote to smaller charities. Similar issues were raised by attendees at the ACCA event who also felt audit fees had risen due to increased regulations required to carry out an audit. Attendees at the Scottish Churches Committee event also highlighted the increasing costs and complexity of undertaking audits.

SCVO and those attending a SCVO webinar highlighted it was hard to obtain accessible and suitable banking and noted increasing burdens, such as anti-money laundering legislation. One respondent noted bank closures could impact cash deposits by charities. Another organisation and attendees at a Scottish Government hosted webinar queried if there were plans to introduce secondary legislation to empower OSCR to use Section 47 of the 2005 Act to unlock dormant charitable assets from financial institutions in light of challenges posed by the banking sector.

“The Scottish Government should consider how long term core funding is managed to assist charities to enable them to take on the roles in the community that the Councils and state have given up. A comprehensive review of funding constraints is needed as several state agencies are now telling charities that they need to be more 'sustainable' and more entrepreneurial to reduce reliance on public sector funding.” – Broadford and Strath Community Company

“Audit thresholds need to be brought more in line with those of businesses as completely unfair at present. Reviewing the SORP regulations so these are easy to follow for charities and auditor. The current guidelines are complex, ambiguous and open to interpretation often putting charities at significant disadvantage depending on an accountant's interpretation of them, and also off-putting to accountants which results in charities struggling to secure an accountant.” – Deaf Links

“The role of receipts and payments accounts. Receipts and payments accounts often don't give a realistic view of the charity's finances. There needs to be greater clarification about what constitutes "voluntary receipts", "receipts from charitable activities", "cost of fundraising" - that clarification needs to be identical from OSCR, HM Revenue and Customs and accountancy bodies.” – Individual

OSCR role and powers

Many respondents commented on the need for regulatory matters to be part of any review, both in terms of strengthening regulatory activity and to consider OSCR's role and powers. Aspects of regulation highlighted included the regulation of boards or founders, social enterprises and unincorporated groups. Some respondents felt the role of OSCR and its powers should be considered, such as ensuring sufficient powers were in place to address charity misconduct such as fraud or trustees in breach of their duties, or to swiftly close a charity if needed. One respondent queried whether there was a right of appeal against OSCR decisions, and attendees at the Third Sector Interface Network event queried whether the time taken by OSCR to respond to or process issues would be considered in any review.

“Powers of OSCR, including powers to propose transfer schemes and further powers for the appointment of charity trustees: the absence of regulations allowing OSCR to propose transfer schemes for approval by the Court of Session deprives OSCR of a valuable form of intervention where there has been charity misconduct; fuller provisions for the appointment of charity trustees modelled on those of the Charity Commission in England and Wales would enable OSCR to assist charities in a wider range of situations than allowed for in the new provisions of the 2023 Act.” – The Law Society of Scotland

Simplify regulation or reduce administrative burden

Simplifying requirements or reducing current demands, particularly for smaller charities, was suggested by many respondents as a focus of any review.

“While it is important for all charities to work within a regulatory framework, it is imperative that regulation is as straightforward as possible. Many charities are dependent on a small number of staff and governance volunteers so it is important that the burden of regulation reflects that while ensuring good practice in all areas of operation.” – Kyle and Lochalsh Community Development Trust

A few respondents raised the need to simplify the process for making changes to charities set up by Royal charter, covered in Chapter 3. Specific aspects mentioned included reviewing processes relating to cy-près schemes³ ensuring appropriate asset transfer arrangements, addressing inconsistencies between regulators such as cross-border issues or different regulatory bodies, simplifying the model constitution for SCIOs, ensuring the charity register is up to date, and providing clear definitions and processes, such as for ‘notifiable events’.

“There should be improved, formal alignment and coordination between the current, relevant regulators, i.e. OSCR, the CIC Regulator, the Scottish Housing Regulator and the Financial Conduct Authority, as well as organisations like the Freedom of Information Commissioner. This should be to simplify and bring clarity to regulation for charities and similar organisations and remove any unnecessary regulation, improve regulation for public accountability and openness and possibly devolve the powers of the UK-wide regulators to OSCR or another relevant body. With these steps there is significant scope to bring innovation, coherence and growth to similar charity and business models and help the movement provide additional economic prosperity and a wellbeing economy.” – Social Enterprise Scotland

“A review of the processes for making changes to the register and the requirement to notify OSCR of changes, in order to make processes as simple and accessible as possible in an increasingly demanding and challenging environment.” – Archdiocese of Glasgow

Process of becoming a charity

Many respondents felt the process of becoming a charity should be considered within any review. Suggested aspects to review included the charity test, considering whether too many charities were undertaking the same type of work to ensure charities have a distinctive purpose, different organisational structures governing charities and whether there is a need to consolidate these, incorporation to a SCIO (see 9B) and clarity around what criteria are required to become a charity or even what a charity is.

³ A cy-près scheme is a legal document that allows charity assets to be redirected to a new charitable purpose if the original purpose is no longer possible.

“The charity test - independence and disbenefit. Better articulation of what is a 'charity' in Scotland for those charities that operate across the UK.” – Individual

“Are there too many charities in Scotland doing very similar things? How could OSCR support sector become more business oriented to develop economies of scale, for example? Is it too easy to set up a charity?” – Individual

Changes in organisational structure

A review that considered charity reorganisation or changes in organisational structure was recommended by many respondents. Challenges included difficulties navigating requirements, legal or advisory fees, ‘technical roadblocks’ hindering restructuring and as noted by the consultation paper, asset transfers. Most commonly, respondents mentioned SCIOs: to make it easier to become incorporated, to change organisational type and to dissolve them, and to consider the interaction between SCIOs and other legal structures of charities. Attendees at a Scottish Government hosted webinar felt different charitable structures are confusing for the public.

“There should be a review of the charity reorganisation provisions, including restricted funds reorganisations, in the 2005 Act and consideration should be given to reform to make the process more straightforward. There should be a review of the provisions relating to SCIOs and, in particular, the current prohibition on a SCIO converting to another legal form and the fact that a SCIO can only amalgamate with another SCIO or transfer its undertaking to a new SCIO.” – Free Church of Scotland

Other suggestions included allowing easier conversion of a Community Interest Company (CIC) or Trust to a SCIO, making mergers or acquisitions easier and providing clearer guidance on dissolution, including how assets should be handled. For instance, attendees at a SCVO webinar called for clearer guidance around the suitability of community asset transfers being transitioned into a SCIO. One individual called for the establishment of an alternative legal form, an Association with Legal Personality, though did not give further detail on this.

“Review and assistance with legal and regulatory requirements for mergers, best practices for collaborations, and governance considerations during and after mergers.” – Stirlingshire Voluntary Enterprise (SVE)

“The register of mergers introduced in the 2023 Act only affects the automatic vesting of legacies. We believe that consideration should be given to extending this to other gifts and donations, a point which was resisted during the 2023 Act’s progress. The register of mergers is also tightly focused only on Scottish charities and does not allow mergers between charities across different jurisdictions within the UK.” – Charity Law Association

‘Public benefit’, public trust and volunteers

Many respondents raised issues around the public, such as a need to review the ‘public benefit’ part of the charity test and the need to consider how to increase public confidence and volunteer engagement. Suggestions included, in particular, the need to better define the meaning of ‘public benefit’, with one respondent noting there is no statutory definition

of it in the 2005 Act. Public trust and confidence were also considered important by some respondents, indeed ‘crucial’ by attendees at a SCVO webinar. For instance, it was felt there is a need to promote confidence in charities through effective regulation or providing clarity over what events were notifiable. Attendees at the Scottish Churches Committee event perceived changes in the 2023 Act had diluted, rather than strengthened, the requirement to notify.

Less mentioned aspects included consideration of declining volunteer participation or volunteer views, membership and membership lists, the impact on the wider public such as trust and confidence in charities, and how public benefit balances with private benefit. However, comments on such aspects were generally brief with little further detail provided.

“Clarification of the definition of public benefit. A statutory basis for notifiable or concerning events, to provide clarity to office bearers with regard to what categories of event should be notified and when, and to provide confidence to the public that issues are being reported appropriately and investigated as necessary.” – The Scottish Churches Committee

“A framework and a culture needs to be established where the wider public should be actively encouraged to hold charities to account, particularly over the issue of charitable purposes and public benefit.” – Individual

Constitution and charitable purposes

Brief comments were left by several respondents to suggest charity constitutions should be included in the review. Where reasons were given, these included reviewing the procedures for changing a constitution, addressing ‘mission creep’ or straying away from the charity’s objectives to obtain funding, and ensuring that the purpose of charities was clear and concise. Attendees at a Scottish Government hosted webinar noted corporate bodies were using the term ‘charitable’ but queried what this actually meant in practice. Similarly, attendees at a SCVO webinar felt a solicitor could argue charitable status for organisations the public does not consider charitable.

Suggestions were made as to what purposes should be included, such as:

- A few consultation respondents called for ‘the advancement of religion’ to be reviewed as a charity purpose. For example, The National Secular Society highlighted the exemption of such charities from certain provisions under the 2005 Act and felt this should be reviewed in light of recent child abuse cases. This purpose was also raised at a Scottish Government hosted webinar where it was suggested the purpose could lead to allowing misogyny.
- Social Enterprise Scotland felt fee-paying schools should not be charities.
- Campbell Stewart MacLennan & Co suggested consideration of whether support of economic development in rural areas should be covered as a charitable objective.

Other issues

Some respondents felt the review should be wide-ranging, with recommendations to ensure a comprehensive review (see Q6). Some other respondents felt activity and

financial reporting should be included, such as the measurable benefits achieved or how charities are meeting their stated objectives. A few respondents highlighted the issue of Trust legislation needing to be reviewed, such as simplifying the process of converting to a SCIO, considering inactive Trusts, and reviewing the limit on trading activities.

Q6. What topics should a review of charity regulation not cover, and why?

40% of respondents left an open comment at Q6. The most prevalent theme was that the review should be wide-ranging or that nothing should be excluded. Thereafter, themes covered charitable purposes/the charity test, recent regulation changes, or specific suggestions on what to exclude. Some respondents left comments on how any review should occur, which have been incorporated into the analysis of responses to Q10.

The review should be wide-ranging or not exclude anything

Many respondents commented that any review should be well-rounded or did not consider any areas of regulation should be excluded. Comments were generally brief and did not tend to explain why this view was held. It was felt any review should not be limited, or that if stakeholders suggested areas to include, these should be part of it. The view that the review should be extensive was also raised at the Law Society of Scotland Charity Law Sub-committee event. Where reasons were provided, they included ensuring regulation remained fit for purpose and that it meets the needs of the voluntary sector.

“No topics should be excluded from the review. All topics of concern raised by stakeholders should be included. There has never been a comprehensive review of the system introduced by Part 1 of the 2005 Act and the opportunity for one now should not be wasted.” – The Law Society of Scotland

“We feel strongly that the review should cover the widest possible range of topics if the sector is to be listened to properly. Indeed, if the review sets out with a pre-determined set of topics, it runs the risk of ignoring concerns which might otherwise have come forward from the wider sector.” – Charity Law Association

Charitable purposes and charity test

Excluding the charity test or charitable purposes in any review was recommended by several respondents, including attendees at the ACCA event. Mostly, respondents were of the view that charitable purposes should not be reviewed. Reasons given included that these are clear and familiar to charities, they were well-established and formed the basis of work for charities and were already agreed with OSCR, that other issues were more pressing or that including these topics could have a detrimental impact on the types of activity that could legitimately be carried out. For instance, two respondents suggested that including charitable purposes could impact either social capital, or serve to ‘socially engineer’ the work of charities. Another two respondents felt the charity test more broadly should be excluded, in other words charitable purposes and public benefit.

“We do not believe that a review of charitable purposes is required. These have been agreed by OSCR and form the basis for the work carried out by charities throughout Scotland. Any changes to these purposes could have a detrimental impact on the types of charitable activity which could legitimately be carried out.” – The Scottish Churches Committee

Recent regulatory changes or consultations should be excluded

Some respondents, mainly organisations, left brief comments suggesting anything covered in recent consultations, notably those leading to the 2023 Act, should be excluded from any review. The Chartered Governance Institute UK & Ireland felt recent consultations had led to positive outcomes relating to OSCR, but that time was now needed to “communicate, understand, implement and embed these changes.”

Specific aspects to exclude

Recommendations to exclude certain aspects of regulation were made by several respondents. A few respondents cautioned against aspects of any review that might add further complication or burden to charity regulation. Two respondents felt SORP requirements should be excluded, with one of these also suggesting receipts and payments accounts should be excluded.

Other specific areas highlighted for exclusion by singular respondents were disciplinary procedures against non-reporting charities and duties of trustees. Three organisations left comments on the role of OSCR, with one respondent calling for it to be adequately funded to fulfil its role and the others suggesting no change was needed.

“The only topics which might be considered out of place would be those where the Scottish Parliament does not have legislative competence (but these are likely to be limited if the review is focused purely on charity law and regulation), or where there are other mechanisms to feed into review processes (for example, through the Charity SORP Committee for accounting formats and principles).” – Charity Law Association

“Excessive Micromanagement, e.g. while financial transparency and accountability are crucial, the regulation should not delve into micromanaging every financial transaction or minor financial decision. Over-regulation in financial matters can lead to excessive administrative burden and divert resources from critical charitable activities.” – Stirlingshire Voluntary Enterprise (SVE)

Q7A. Charitable purposes: Should this aspect of charity regulation be reviewed?

Audience	Sample size (n=)	% Yes	% No	% Don't know	% No answer
All respondents	163	51	33	12	5
All answering	155	54	34	12	-
Individuals	83	58	35	7	-
Organisations:	72	49	33	18	-
- Charity	46	43	35	22	-
- Umbrella, infrastructure and membership bodies	14	71	14	14	-
- Professional advisors (inc. legal/financial)	10	40	50	10	-
- Other	2	50	50	0	-

Just over half (54%) of those answering Q7A agreed that charitable purposes should be reviewed; 34% disagreed and 12% were unsure. Individuals were more likely than organisations to feel it should be included (58% compared to 49% respectively).

Agreement varied by type of organisation, from 40% among professional advisors to 71% among umbrella, infrastructure and membership bodies.

Q7B. Public benefit: Should this aspect of charity regulation be reviewed?

Audience	Sample size (n=)	% Yes	% No	% Don't know	% No answer
All respondents	163	52	26	13	9
All answering	149	57	29	14	-
Individuals	79	58	33	9	-
Organisations:	70	56	24	20	-
- Charity	44	57	20	23	-
- Umbrella, infrastructure and membership bodies	14	64	21	14	-
- Professional advisors (inc. legal/financial)	10	40	40	20	-
- Other	2	50	50	0	-

Among those answering Q7B, 57% agreed that public benefit should be included in the review of charity regulation; 29% disagreed and 14% were unsure. While similar levels of agreement were recorded by individuals (58%) and organisations (56%), organisations were less likely to disagree (24% compared to 33% of individuals) and more likely to be unsure (20% compared to 9% of individuals).

Q7C. Charity trustee duties: Should this aspect of charity regulation be reviewed?

Audience	Sample size (n=)	% Yes	% No	% Don't know	% No answer
All respondents	163	66	17	12	6
All answering	154	69	18	13	-
Individuals	82	78	18	4	-
Organisations:	72	60	17	24	-
- Charity	45	58	13	29	-
- Umbrella, infrastructure and membership bodies	15	67	20	13	-
- Professional advisors (inc. legal/financial)	10	60	20	20	-
- Other	2	50	50	0	-

69% of respondents answering Q7C agreed that charity trustee duties should be included in the review; 18% disagreed and 13% were unsure. Support for including this aspect of charity regulation was higher among individuals (78%) than organisations (60%), with the organisations being more likely to be unsure (24% compared to 4% of individuals).

Q8. Is there anything else you think should be included in a review of charity regulation? Please explain what and why

Over a third (35%) of respondents left an open comment on other aspects they believed should be included in any review. Some of the issues raised in Q8 are covered by other questions, so views have been incorporated into other sections to avoid repetition. These included in order of prevalence, governance or trustee responsibilities (Q5), audit threshold (Q9C), finance (Q5) and charitable purposes (Q5). Aside from these, the themes raised were that greater regulation was required and more general comments or views on charity employees.

Regulation is needed

Some respondents felt that strengthened regulation was needed, though these comments were generally brief, such as stating: 'enforcement', 'penalties for failing charities' and 'adequacy of the complaints process'. Suggestions for improvement included publishing outcomes of investigations, updating OSCR guidance to ensure consistency in its application and introducing an independent trustee role or requirement to select a local legal or financial person whose role would be to ensure compliance and transparency.

"We ... think that a focus on how OSCR uses its powers to apply the current rules may be beneficial, and believe that a wide review which is responsive to the sector should be open to hearing any sector concerns in relation to those areas." – Charity Law Association

Comments on charity employees and volunteers

Safeguarding and disclosures for staff and volunteers, as well as accountability structures for staff, discrimination against staff and employee benefits were suggested by some respondents to be included in any review. Comments were generally brief and did not go into detail.

"Enhanced disclosures conducted on all levels of staff. All charities should have a maximum number of volunteers and paid staff (if any) to ensure fair and just resource allocation." – Individual

Other views

A few respondents left more general comments. These included two respondents who felt efforts should concentrate on supporting charities to achieve sufficient funding to enable them to focus on delivery, such as multi-year funding. One respondent felt regulation appeared fit for purpose as it was and another felt that charities were becoming less likely to challenge or critique government and funders and felt this should be addressed.

Chapter 3: Technical areas

Three technical topics have been identified to form part of a 'technical workstream', separate from any wider review of charity regulation. Details of these topics were given in the Annex of the consultation document.

Reorganisation of statutory and Royal charter charities

Q9A. Reorganisation of statutory and Royal charter charities: Should this technical topic be reviewed?

Audience	Sample size (n=)	% Yes	% No	% Don't know	% No answer
All respondents	163	48	12	35	6
All answering	154	51	12	37	-
Individuals	81	49	15	36	-
Organisations:	73	52	10	38	-
- Charity	47	43	9	49	-
- Umbrella, infrastructure and membership bodies	14	71	7	21	-
- Professional advisors (inc. legal/financial)	10	70	10	20	-
- Other	2	50	50	0	-

Half of respondents (51%) answering Q9A felt that the reorganisation of statutory and Royal charter charities should be reviewed; 12% disagreed, and 37% were unsure. Around half of individuals (49%) and organisations (52%) who responded to the consultation were in favour of this approach, with opinion varying by organisation type from 43% among charities to 71% among umbrella, infrastructure, and membership bodies.

Views on this topic given at Q10 are detailed here. Several respondents commented on the reorganisation of statutory and Royal charter charities, with the majority focusing specifically on NHS Endowment Funds and two respondents providing more general comments on such charities.

Comments on NHS Endowment Funds tended to highlight a 2021 commitment by the Scottish Government to make changes to address the conflict of interest created by the legal structure governing such charities i.e. that the health board is also the trustee of the endowment fund. Respondents raising this topic, which included attendees at a SCVO webinar, welcomed the focus of this technical workstream, calling for confirmation that specific legislative changes and mechanisms by which NHS Endowment Funds could reorganise and make amendments to their governing structure would be considered. Constraints faced by such charities should this issue fail to be considered were noted, in particular reducing the impact these charities have in promoting health and wellbeing in Scotland. NHS Charities Together called for the work to be taken forward in partnership

with itself and NHS Endowment Funds, and to identify and seek to mitigate challenges faced by NHS Endowment Funds' changing organisational type, particularly among smaller charities and for an implementation plan to take forward any recommendations.

On the broader issue of all statutory and Royal charter charities forming a technical workstream, one respondent felt any reorganisation must retain and respect the connections these charities benefit from with the Scottish Parliament or Privy Council, and not undermine existing legislation. Another respondent felt it was debatable whether applications to change structures for such bodies should go through OSCR but believed this could be a sensible solution.

“Legislation must make clear to what extent the approval of reorganisation schemes falls under the purview of the OSCR. This clarity will support charities through what is often a complex, time-consuming and costly legal process. The supplemental Charter procedure for Royal Charter bodies to amend their governing documents could be changed to include a default amendment power, exercisable with Privy Council consent. The Charities Act 2022, in force in England and Wales, has introduced changes which may be worth consideration on this issue.” – The Chartered Governance Institute UK & Ireland

Incorporation to a Scottish Charitable Incorporated Organisation (SCIO)

Q9B. Incorporation to a Scottish Charitable Incorporated Organisation (SCIO): Should this technical topic be reviewed?

Audience	Sample size (n=)	% Yes	% No	% Don't know	% No answer
All respondents	163	53	17	23	7
All answering	151	57	18	25	-
Individuals	82	55	22	23	-
Organisations:	69	59	13	28	-
- Charity	44	48	14	39	-
- Umbrella, infrastructure and membership bodies	13	92	0	8	-
- Professional advisors (inc. legal/financial)	10	70	20	10	-
- Other	2	50	50	0	-

Among respondents answering Q9B, 57% agreed that incorporation to a SCIO should be reviewed, while 18% disagreed and one quarter (25%) were unsure. Over half of individuals (55%) and three fifths of organisations (59%) who responded to the consultation were in favour, with opinions varying by organisation type from 48% among charities to 92% among umbrella, infrastructure and membership bodies.

Several respondents gave views on changing organisational structure at Q10, and this issue was raised at Q5. However, comments from both those questions specifically relating to incorporating to a SCIO are addressed here.

Support for this workstream was evident in open comments. Respondents' views highlighted with the consultation paper, noting that navigating incorporation to a SCIO could be costly and complex. Turcan Connell suggested this could be a barrier to charities adopting a better governance structure. Specific entities that could experience challenges to becoming a SCIO were noted as CICs, Trusts and Friendly Societies. One organisation highlighted that there is a provision in England and Wales to allow for the conversion of a CIC to a Charitable Incorporated Organisation but that this was not in place in Scotland.

Legislative amendments were viewed by one professional advisor as a way to increase public trust in SCIOs, provide enhanced protections for groups once incorporated and help trustees better understand the benefits of SCIO status and the types of costs incurred. This organisation felt OSCR is not the only relevant regulator in this regard, as charities could experience difficulties transferring assets from the old charity entity to the new SCIO. Another respondent highlighted potential challenges arising from being allocated a different charity number upon incorporation if inspected by the Care Inspectorate as historical records on the Care Register were then lost.

Suggested improvements were given in Q5. For instance, one respondent suggested clarifying the benefits of incorporation, such as gift aid, rates relief and taxation, while another felt OSCR should ensure applications were not made simply to avoid paying tax. Others suggested more effort should be made to avoid duplication such as checking if there is already a charity providing proposed activities, considering whether all charities should operate under the same legislative framework, considering the length of time taken to become incorporated, and clarifying the level of regulation needed for different types of charities or requiring all charities to become either a SCIO or registered company.

Audit income threshold

Q9C. Audit income thresholds: Should this technical topic be reviewed?

Audience	Sample size (n=)	% Yes	% No	% Don't know	% No answer
All respondents	163	70	10	14	6
All answering	153	75	10	15	-
Individuals	82	74	13	12	-
Organisations:	71	75	7	18	-
- Charity	45	67	7	27	-
- Umbrella, infrastructure and membership bodies	13	85	8	8	-
- Professional advisors (inc. legal/financial)	11	100	0	0	-
- Other	2	50	50	0	-

Three quarters (75%) of those answering Q9C felt that the audit income threshold should be reviewed; 10% disagreed, and 15% were unsure. The same proportion of individuals (74%) and organisations (75%) supported a review of this topic. Organisational support varied from 67% support among charities to 100% of professional advisors who supported a review of the audit income threshold.

Many respondents left detailed comments at Q10 on incorporating finance-related matters into a technical workstream and many also provided comments at Q2 indicating financial matters should be incorporated into any review. Analysis of finance matters that respondents felt should be incorporated into any review - aside from the audit income threshold – are covered in Q5. This section considers comments on the audit threshold specifically.

Commonly, respondents suggested that smaller charities, in particular, faced a disproportionate financial burden related to obtaining audits and that the current threshold of £500,000 was set too low. Respondents highlighted that in England and Wales, the threshold is set at £1 million. While there was a sense this could be preferable in Scotland, respondents generally did not specify the level at which the audit threshold should be set. Attendees at the Law Society of Scotland Charity Law Sub-committee event noted the current threshold level was negatively impacting the desire of some charities to grow as exceeding it would require more onerous reporting requirements, while those attending a Scottish Government hosted webinar also highlighted the need for proportionate approaches that take account of the size and complexity of charities.

Differences between the way the threshold operates in Scotland compared to the rest of the UK were also highlighted with calls made to align these. This was a particular concern for charities that operated across the UK. For instance, one respondent noted purchases of fixed assets or investments and loans made or repaid were excluded in England and Wales but that in Scotland, all income except endowment income counted towards the income threshold for audit⁴.

Four faith-based charities highlighted that gross asset values were taken into account in Scotland when determining if an audit was required. They noted a charity might have substantial loans or other liabilities that were not taken into account using a gross value, identifying situations where a charity might own multiple buildings for a limited period, even though income was relatively low. This led to The Scottish Episcopal Church recommending flexibility in such cases of one-off breaches in an income threshold, a view also held by attendees at the ACCA event and at the Scottish Churches Committee event.

Inconsistencies with company law were also highlighted by Age Scotland who stated companies only needed to conduct an audit at income levels of £10.2 million or over.

⁴ For information on external scrutiny requirements of charity accounts in Scotland, please refer to the OSCR publication '[A Guide to Charity Accounts: Overview](#)'.

Q10. Are there any other technical issues you think should be added to the technical workstream?

Over a third (35%) of respondents left open comments at Q10. However, most of these related to areas addressed in other questions. For instance, as open comments were not requested for the questions on the technical workstreams Q9 (A-C), views on these were given in Q10 and have been incorporated in the analysis of Q9. Where changes to organisational structures were raised, views on incorporation to a SCIO are included in Q9B, while other types of changes are addressed in Q5. The only other identified themes at Q10 were trustee matters (incorporated in Q5) and suggested actions for the Scottish Government to consider.

Suggested actions for the Scottish Government

Some respondents suggested actions for the Scottish Government to consider. In relation to the technical workstreams, the Law Society of Scotland called for further thought to be given to the distinction between technical and non-technical aspects and suggested winding up or dissolution, reorganisation and SCIOs more broadly be considered within technical workstreams, as well as SCIO incorporation. They recognised the reorganisation of statutory and Royal charter charities could be considered to have difficult technical questions but felt it could be addressed in any wider review, though did not give further reasons for this. SCVO felt it was for the Scottish Government to determine what topics should be addressed within technical workstreams.

Other points raised included the need to align duties, registrations and thresholds between OSCR and the Charity Commission for England and Wales and to consider the impact of future technologies, though no further detail was provided on this last point.

Calls were made by some respondents in Q6 on the review process. These included to base any review on objective criteria, evidence and feedback from this consultation and to ensure consultation with the sector as part of the review. One respondent requested a fast turnaround time and attendees at an event held by the Law Society of Scotland Charity Law Sub-committee perceived a need to action any review in advance of the next Scottish Parliament elections in May 2026. Conversely, those at the Scottish Churches Committee event questioned whether it was feasible to take forward the work by this date.

Chapter 4: Conclusions

Many individuals and organisations participated in the consultation, sharing their time, views and expertise on what any forthcoming review of charity regulation should cover, including additional considerations for technical workstreams. This report provides a high-level summary of the consultation responses. For more detail, readers are encouraged to read individual responses where permission was given for publication⁵.

There was a broad consensus that a review of charity regulation would be timely and should occur. Respondents highlighted that a review should consider charity governance, financial aspects such as audit levels, and how to strengthen regulation or reduce complexity. Many respondents, however, suggested now was not the right time for a review due to the challenges currently facing Scotland's third sector, potential issues with conducting a review or expressing a preference for the status quo.

A majority felt any review should focus on assessing the effectiveness of current charity regulation in meeting the sector's future needs. Some support was evident for reviewing the 2005 Act, and in open comments, some respondents called for both options to be included. Most felt they or their organisation would have the capacity to contribute to a review, though concerns were expressed that some organisations, particularly smaller organisations, may have less capacity to respond.

Suggestions for topics to include in a review were wide-ranging, with many respondents calling for the review to be comprehensive and not exclude anything. A majority of respondents agreed that charitable purposes, public benefit and charity trustee duties should be included in a review, with most support given to reviewing trustee duties. Other suggestions included charity governance, trustee roles and responsibilities, consideration of trustee recruitment and diversity, charity finances, OSCR's role and powers, becoming a charity, and changes in organisational structure. Many respondents also felt there should be a focus on reducing current demands on charities and simplifying regulations to relieve administrative burdens, while some respondents felt staff terms and conditions, safeguarding, or staff accountability structures should be included. Suggested exclusions included recent regulatory changes, which had already been the subject of consultation and required time to be implemented. Mixed views were expressed on whether the charity test should be included.

When considering three suggested technical workstreams, most support was evident for reviewing the audit threshold, with a prevailing view that the current threshold is set too low. On the other workstreams, NHS Endowment Funds were considered important to review within the reorganisation of statutory and Royal charter charities workstream, while there was agreement that incorporating to a SCIO could be complex, particularly for small groups or particular organisations such as CICs, Trusts or Friendly Societies.

Other considerations and suggestions for how the Scottish Government should proceed with any review included ensuring that it is based on objective criteria, that there is

⁵ [Scottish Government's consultation website](#)

consultation with the sector, that it is completed within the current Parliamentary term, and that recommendations are taken forward.

Appendix A: Quantitative analysis

The consultation included 9 closed questions which asked respondents for their views on the possible approaches set out in the consultation paper. This appendix details the responses to these questions.

Not all respondents answered every question. However, where those who did not answer the closed questions expressed a view in their open comments, this has been noted in the qualitative analysis.

To allow comparisons across sub-groups, the tables in this report and appendix present the results of the closed questions **based on those who answered each question**.

For clarity, each table shows:

- The percentage of respondents **from the total sample** of 163 respondents who selected each response (grey row).
- The percentage of respondents **among those who answered each question**, broken down by individual and organisation responses and by type of organisation (rows including and under “All answering”).
- The sample size column notes how many respondents within each audience answered each question.

Please note that the row percentages may not add to 100% due to rounding.

Q1. Should there be a review of charity regulation?

Audience	Sample size (n=)	% Yes	% No	% Don't know	% No answer
All respondents	163	80	8	9	4
All answering	157	83	8	9	-
Individuals	82	80	11	9	-
Organisations:	75	85	5	9	-
- Charity	46	83	7	11	-
- Umbrella, infrastructure and membership bodies	16	88	0	13	-
- Professional advisors (inc. legal/financial)	11	100	0	0	-
- Other	2	50	50	0	-

Q3. If a review of charity regulation is undertaken, which of the following should be the purpose of the review (choose one):

Option 1: To assess the effectiveness of current charity regulation in meeting the future needs of the sector.

Option 2: To review the Charities and Trustee Investment (Scotland) Act 2005 - exploring if the Act is doing what it set out to do and if any changes are required.

Other – please specify.

Audience	Sample size (n=)	% Option 1	% Option 2	% Don't know	% Other	% No answer
All respondents	163	51	26	12	6	5
All answering	155	54	28	12	6	-
Individuals	82	56	30	10	4	-
Organisations:	73	51	25	15	10	-
- Charity	46	37	37	13	13	-
- Umbrella, infrastructure and membership bodies	15	80	7	7	7	-
- Professional advisors (inc. legal/financial)	11	64	0	36	0	-
- Other	1	100	0	0	0	-

Q4. Do you think you or your organisation will have capacity to contribute views to a review process in the next 12 months?

Yes / No / Don't know

Audience	Sample size (n=)	% Yes	% No	% Don't know	% No answer
All respondents	163	67	9	20	3
All answering	158	70	9	21	-
Individuals	83	64	13	23	-
Organisations:	75	76	5	19	-
- Charity	46	74	4	22	-
- Umbrella, infrastructure and membership bodies	16	88	0	13	-
- Professional advisors (inc. legal/financial)	11	82	0	18	-
- Other	2	0	100	0	-

Q7A. Charitable purposes: Should this aspect of charity regulation be reviewed?

Audience	Sample size (n=)	% Yes	% No	% Don't know	% No answer
All respondents	163	51	33	12	5
All answering	155	54	34	12	-
Individuals	83	58	35	7	-
Organisations:	72	49	33	18	-
- Charity	46	43	35	22	-
- Umbrella, infrastructure and membership bodies	14	71	14	14	-
- Professional advisors (inc. legal/financial)	10	40	50	10	-
- Other	2	50	50	0	-

Q7B. Public benefit: Should this aspect of charity regulation be reviewed?

Audience	Sample size (n=)	% Yes	% No	% Don't know	% No answer
All respondents	163	52	26	13	9
All answering	149	57	29	14	-
Individuals	79	58	33	9	-
Organisations:	70	56	24	20	-
- Charity	44	57	20	23	-
- Umbrella, infrastructure and membership bodies	14	64	21	14	-
- Professional advisors (inc. legal/financial)	10	40	40	20	-
- Other	2	50	50	0	-

Q7C. Charity trustee duties: Should this aspect of charity regulation be reviewed?

Audience	Sample size (n=)	% Yes	% No	% Don't know	% No answer
All respondents	163	66	17	12	6
All answering	154	69	18	13	-
Individuals	82	78	18	4	-
Organisations:	72	60	17	24	-
- Charity	45	58	13	29	-
- Umbrella, infrastructure and membership bodies	15	67	20	13	-
- Professional advisors (inc. legal/financial)	10	60	20	20	-
- Other	2	50	50	0	-

Q9A. Reorganisation of statutory and Royal charter charities: Should this technical topic be reviewed?

Audience	Sample size (n=)	% Yes	% No	% Don't know	% No answer
All respondents	163	48	12	35	6
All answering	154	51	12	37	-
Individuals	81	49	15	36	-
Organisations:	73	52	10	38	-
- Charity	47	43	9	49	-
- Umbrella, infrastructure and membership bodies	14	71	7	21	-
- Professional advisors (inc. legal/financial)	10	70	10	20	-
- Other	2	50	50	0	-

Q9B. Incorporation to a Scottish Charitable Incorporated Organisation (SCIO): Should this technical topic be reviewed?

Audience	Sample size (n=)	% Yes	% No	% Don't know	% No answer
All respondents	163	53	17	23	7
All answering	151	57	18	25	-
Individuals	82	55	22	23	-
Organisations:	69	59	13	28	-
- Charity	44	48	14	39	-
- Umbrella, infrastructure and membership bodies	13	92	0	8	-
- Professional advisors (inc. legal/financial)	10	70	20	10	-
- Other	2	50	50	0	-

Q9C. Audit income thresholds: Should this technical topic be reviewed?

Audience	Sample size (n=)	% Yes	% No	% Don't know	% No answer
All respondents	163	70	10	14	6
All answering	153	75	10	15	-
Individuals	82	74	13	12	-
Organisations:	71	75	7	18	-
- Charity	45	67	7	27	-
- Umbrella, infrastructure and membership bodies	13	85	8	8	-
- Professional advisors (inc. legal/financial)	11	100	0	0	-
- Other	2	50	50	0	-

Appendix B: Organisations responding

The following list of organisations responded to the consultation and gave permission for their response to be published.

Aberdeenshire Voluntary Action TSI and Aberdeen Council of Voluntary Organisations TSI

ACCA

Age Scotland

Archdiocese of Glasgow

Arran Community and Voluntary Service

Banchory & District Initiative Ltd

Bell Barr & Company

Bishops' Conference of Scotland

Broadford and Strath Community Company

Charity Finance Group

Charity Law Association

Children in Scotland

CSM & Co

Deaf Links

Fife Health Charity

Free Church of Scotland

Girlguiding Scotland

Highland Council

Highland Third Sector Interface (HTSI)

ICAS

Irvine Castlepark community association

Kyle and Lochalsh Community Development Trust

LifeCare Edinburgh

Methodist Church in Great Britain

Midlothian Voluntary Action

National Secular Society

Nevis Accountancy Services Limited

NHS Charities Together

NHS Forth Valley Endowment Fund

NHS Grampian Charity

NHS Lothian Charity

NHS Tayside Charitable Foundation

Nostalgia Community Group

Open Past

Peace & Justice

RAFA Glasgow Branch

RHASS

Roman Catholic Diocese of Paisley

Royal Incorporation of Architects in Scotland

Scottish College (Congregational and United Reformed)

Scottish Council for Voluntary Organisations

Scottish Episcopal Church

Scottish Fundraising Adjudication Panel

Social Enterprise Scotland

Society of Antiquaries of Scotland

Staffin Community Trust

Stirlingshire Voluntary Enterprise (SVE)

The Chartered Governance Institute UK & Ireland

The Church of Scotland

The Law Society of Scotland

The National Trust for Scotland

The Scottish Churches Committee

tsiMORAY

Turcan Connell

United Reformed Church Synod of Scotland

Voluntary Action Shetland

Volunteer Scotland

Appendix C: Consultation questions

Q1. Should there be a review of charity regulation?

Q2. Please explain why you think there should or should not be a review of charity regulation.

Q3. If a review of charity regulation is undertaken, which of the following should be the purpose of the review (choose one):

- To assess the effectiveness of current charity regulation in meeting the future needs of the sector
- To review the Charities and Trustee Investment (Scotland) Act 2005 - exploring if the Act is doing what it set out to do and if any changes are required
- Don't know
- Other – please specify

Q4. Do you think you or your organisation will have capacity to contribute views to a review process in the next 12 months?

Q5. If a review of charity regulation is conducted, what topics should it cover and why?

Q6. What topics should it not cover, and why?

Q7A. Charitable purposes: Should this aspect of charity regulation be reviewed?

Q7B. Public benefit: Should this aspect of charity regulation be reviewed?

Q7C. Charity trustee duties: Should this aspect of charity regulation be reviewed?

Q8. Is there anything else you think should be included in a review of charity regulation?

Q9A. Reorganisation of statutory and Royal charter charities: Should this technical topic be reviewed?

Q9B. Incorporation to a Scottish Charitable Incorporated Organisation (SCIO): Should this technical topic be reviewed?

Q9C. Audit income thresholds: Should this technical topic be reviewed?

Q10. Are there any other technical issues you think should be added to the technical workstream?



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