

Response ID ANON-ZJF2-PHVM-Q

Submitted to **Consultation on Scottish Charity Law**
Submitted on **2019-03-22 17:32:37**

Section 1: Publishing annual reports and accounts in full for all charities on the Scottish Charity Register

1 On the Scottish Charity Register, should OSCR be able to publish charity annual reports and accounts in full for all charities?

Yes

Please explain your answer including any potential benefits/risks.:

Names and country of residence of individual charity trustees should be made available to the public in the interests of transparency and public trust. Their contact details should be shown as "c/o the Principal Contact Address".

However, the Society suggests that an exemption be offered to those charities where the safe operating conditions of a charity could be compromised by the release of data contained within these reports; in such instances the charity should have the ability to apply for an exemption allowing them to redact the relevant data.

2 Do you think there is any information in charity annual reports and accounts that should not be published on the Scottish Charity Register?

No

Please say what information you think should not be published.:

Other than those noted in Q1 regarding the safe operation of specific charities, dealt with on a case-by-case basis.

3 Do you think charities should be allowed to apply for a dispensation (exemption) from having their annual reports and accounts published in full on the Scottish Charity Register?

No

Please explain your answer (e.g. in what circumstances do you think a dispensation (exemption) should be allowed? Why you think a dispensation (exemption) should not be allowed?):

Other than those noted in Q1 regarding the safe operation of specific charities, dealt with on a case-by-case basis.

Section 2: An internal database and external register of charity trustees

4 Should OSCR be able to collect the trustee information noted above for use in an internal database?

Yes

5 Should the names of trustees be published on the external public register?

Yes

6 Should the names of trustees who have been removed following an inquiry by OSCR, be published on the external public register?

Yes

7 Do you think trustees should be allowed to apply for a dispensation (exemption) from having their name published on the external public register?

Yes

Please explain answer (e.g. in what circumstances do you think a dispensation (exemption) should be allowed? Why you think a dispensation (exemption) should not be allowed?):

Only those specific charities noted in Q1 regarding their safe operation and dealt with on a case-by-case basis should be allowed to apply for a dispensation (probably as part of the same application for redaction).

If you wish to explain any of your responses to the questions in Section 2, please do so. (e.g. setting out what information you think should be / should not be included on an internal database and external public register, and what you see as the benefits and risks of each proposal)

If you wish to explain any of your responses to the questions in Section 2, please do so in the box below. (e.g. setting out what information you think should be / should not be included on an internal database and external public register, and what you see as the benefits and risks of each proposal):

OSCR will have to ensure the safe storage of such information as per GDPR.

The external public facing register should have the minimal information necessary to allow the public transparency with regard to the governance of organisations

benefiting from their registration as a charity. Perhaps just a name and country of origin.

Charity trustees and operational executive staff need to know whether potential trustees have previously been removed as trustees. Public trust will benefit from such publication by ensuring transparency of process.

Section 3: Criteria for automatic disqualification of charity trustees and individuals employed in senior management positions in charities

8 Should the criteria for disqualification and removal of charity trustees be extended to match the criteria in England and Wales?

Yes

9 Should the criteria for disqualification and removal also be extended to those in certain senior management positions?

No

If you wish to explain your responses to any of the questions in Section 3, please do so. (e.g. why you think yes, why you think no, what criteria for disqualification and removal should / should not be included, are there additional criteria you think should be included):

If you wish to explain your responses to any of the questions in Section 3, please do so in the box below. (e.g. why you think yes, why you think no, what criteria for disqualification and removal should / should not be included, are there additional criteria you think should be included)::

Question 8 - Yes – however the Society of Antiquaries of Scotland agrees with the SCVO that the consultation paper does not go into enough detail to set the parameters of this alignment. For example, charities working with ex-offenders may want to include trustees on their board as part of their rehabilitation and to harness their knowledge to benefit the

delivery of charitable services, and most convictions may not make an individual unsuitable to be a trustee.

Question 9 - No - Those in senior management positions should not be included under OSCR's remit since their appointment will already be covered by employment law, unless they are volunteers.

Section 4: A power to issue positive directions to charities

10 Should OSCR be given a power to issue positive directions?

Yes

11 If you answered Yes to question 10, should a power to issue positive directions be wide ranging or a specific power?

Wide ranging

12 If a charity failed to comply with a positive direction that OSCR had issued, should this be classed as trustee misconduct?

Yes

If you wish to explain your responses to any of the questions in Section 4, please do so. (e.g. why you think yes, why you think no, why you think a positive direction should be wide ranging or a specific power, what should a specific power include?)

If you wish to explain your responses to any of the questions in Section 4, please do so in the box below (e.g. why you think yes, why you think no, why you think a positive direction should be wide ranging or a specific power, what should a specific power include?):

There is not enough information in the consultation to discern the difference between a wide ranging power and a specific power. The obligation to publish an associated inquiry report is a good one. OSCR should not be able to direct a charity to undertake its charitable activity/services in a specific way, thus retaining the independence of the charity.

A timetabled process will be required to ensure Trustees had the ability to undertake or discuss issues with undertaking any particular direction with OSCR.

Section 5: Removal of charities from the Scottish Charity Register that are persistently failing to submit annual reports and accounts and may no longer exist

13 Should OSCR be able to remove charities from the Scottish Charity Register if they have persistently failed to submit annual reports and accounts?

Yes

14 Should OSCR be given a positive power of direction to direct a charity to prepare annual reports and accounts?

Yes

15 If a charity failed to comply with a positive direction to prepare annual reports and accounts, do you think this should be classed as trustee misconduct?

Yes

If you wish to explain your responses to any of the questions in Section 5, please do so. (e.g. why you think yes and why you think no to the questions and what you see as the benefits and risks of each proposal)

If you wish to explain your responses to any of the questions in Section 5, please do so in the box below (e.g. why you think yes and why you think no to the questions and what you see as the benefits and risks of each proposal):

Charities must act with transparency to retain public trust and retain the benefits they receive. Any such direction should be accompanied by the publication of an associated inquiry report, and a timetabled process that gives the Trustees the ability to discuss the direction with OSCR.

Section 6: All charities in the Scottish Charity Register to have and retain a connection in Scotland

17 Should all charities registered in Scotland be required to have and retain a connection with Scotland?

Yes

Please explain your answer.:

We agree with the reasons provided in the consultation. In addition, public trust in Scottish charities and Scotland the brand in general could be diminished if OSCR were unable to properly regulate charities that had no connection with Scotland.

Section 7: Inquiries into the former charity trustees of bodies which have ceased to exist and bodies which are no longer charities

18 Should OSCR be able to make inquiries into former trustees of a body which is no longer a charity, a charity which has ceased to exist and individuals who were in management and control of a body which is no longer controlled by a charity?

Yes

Please explain your answer.:

This question (and others) requires a "maybe" option. It could be argued that any application to OSCR to cease to exist would require OSCR to investigate the reasons behind the request, or the use of its own power to remove, which could take the form of an inquiry that would reveal misconduct. Alternatively, if such suggestions were made /came to light about a charity post-ceasing to exist, OSCR could open an inquiry into any charity which included Trustees from a suspect ceased charity.

However, these may require even more resource, and it may be simpler and more efficient to have the power suggested in the consultation.

Section 8: De-registered charities' assets and public benefit

19 Should bodies that have de-registered as charities be required to continue to use the assets held at the time of removal from the Scottish Charity Register to provide public benefit?

Yes

Please explain your answer.:

If the assets were part of the charity's activity and provided public benefit then they should be retained for that purpose wherever possible. It may not be possible or in the public interest to do so. Most charities have a clause in their constitution to this effect in any case, and Royal Chartered organisations are also being encouraged to have the same in their Charters.

SCVO adds, and the Society supports: In some cases, additional restrictions may be required; for example, some collections held by Trusts that should not be capable of being sold for cash even if this is for charitable or public benefit. This will be specified in the charities' articles and should only be overturned by an appropriate court order or Act of parliament.

Section 9: The speed and efficiency of OSCR's powers to gather information when making inquiries

20 Should OSCR be given the power to give the required notice of a request for information to a body or individual that is misrepresenting themselves as a charity, that is no longer charity, and to former trustees of a charity which has ceased to exist?

Yes

Please explain your answer.:

21 Should it be clarified that the notice periods to charities that are subject to a request for information can overlap?

Yes

Please explain your answer. :

Section 10: The reorganisation of charities established under royal charter, warrant or enactment

22 Should the legislation be clarified to make clear whether OSCR can approve reorganisation schemes for certain charities that have been established by royal charter, warrant or enactment?

No

Please explain your answer.:

Unsure what is being asked here - the legislation should be clear at all times, is OSCR asking for the power to allow Charities with a Royal Charter/Warrant etc to reorganise? The question as put simply states "whether OSCR can"... so it might or it might not - presumably this will need to be agreed with Privy Council?

About you

What is your name?

Name:

Dr Simon Gilmour

What is your email address?

Email:

director@socantscot.org

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Society of Antiquaries of Scotland

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Slightly satisfied

Please enter comments here.:

Glad to be asked but some questions were too ambiguous and could have been better served with more than a yes/no answer.

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Slightly satisfied

Please enter comments here.: