

Response ID ANON-ZJF2-PHV2-V

Submitted to **Consultation on Scottish Charity Law**
Submitted on **2019-03-21 16:32:56**

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.:

Society is entitled to transparency for all organisations which enjoy tax and other privileges. But see answer 2 below.

2 Do you think there is any information in charity annual reports and accounts that should not be published on the Scottish Charity Register?

Yes

Please say what information you think should not be published.:

Personal contact details of individual charity trustees. Their contacts should be shown as "c/o the Principal Contact Address".

For organisations registered as both a Charity and a Company the change makes little difference as these details would be available on Companies House.

However, BEFS would suggest that when the safe operating conditions of a Charity could be compromised by the release of data contained within these reports – these charities should have an exemption allowing them to redact the necessary data. (ie the location of 'safe' premises, inadvertent release of service user data [eg – where service users are also trustees], or data which could endanger any person – are examples which come to mind.)

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?):

However, BEFS would reiterate that when the safe operating conditions of a Charity could be compromised by the release of data contained within these reports – these charities should have an exemption allowing them to redact the necessary data. (ie the location of 'safe' premises, inadvertent release of service user data [eg – where service users are also trustees], or data which could endanger any person – are examples which come to mind.)

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?):

Yes, but only in extremely rare cases. A procedure would be needed for OSCR to authorise this.

Exemptions may relate to potential release of service-user data – these charities should have an exemption in relation to the external public register allowing them to redact the necessary data. ie inadvertent release of service user data [eg – where service users are also trustees].

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):

Question 4:

The internal database should hold all the information listed in Paras 34 & 35 above.

The information available for external search should be limited to what is stated in Para 36.

See Answer 2 above regarding charity trustees' published addresses.

Note that the current Trustee Declaration forms required by OSCR from those seeking to register a new charity in Scotland already call for full names, previous names, dates of birth, addresses, email addresses (when available) and telephone numbers, as well as a list of other Scottish Charities of which the applicants are trustees.

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 SVCO raises the following question which would need to be addressed: 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 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 as that is operational, rather than governance, related.

If the trustees have already been disqualified, OSCR must have faith in any new trustees to run the charity in a legal and proper manner.

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?

A specific power

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?):

Q 11 - A specific power – governance only, no operational directives.

Q12 – this should only be classed as trustee misconduct if every practicable step has been taken. Should a trustee be unable to carry out OSCR directives time should be allowed to enable the directives to take place. (ie failure to recruit additional board members due to lack of applications, rather than lack of recruitment.)

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)::

Q13 – definition of persistently to be clearly set out.

Q15 – assuming due time and process has been allowed.

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.:

However, a charity registered in Scotland and with a principal address in Scotland and with at least one trustee resident in Scotland should be permitted to deliver all of its charitable purposes outside Scotland. Document Paragraph 62 summarises a reasonable outcome.

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.:

Both the charity and its last trustees should be subject to OSCR's jurisdiction.

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.:

Scotland's Charitable Purpose requirements should not superseded.

SCVO adds, and BEFS 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.:

Society supports charities because it is believed that they will at all times be fulfilling charitable purposes and providing public benefit. Misrepresentation and retaining assets previously held for those purposes should be subject to OSCR's jurisdiction.

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. :

Clarification of timing for all parties can be nothing but useful.

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.:

Not unless there is additional legislation regarding these bodies, many of whom will be historic.

About you

What is your name?

Name:

Ailsa Macfarlane

What is your email address?

Email:

amacfarlane@befsf.org.uk

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Built Environment Forum 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.:

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

Very satisfied

Please enter comments here.: