



Response to consultation on Scottish Charity Law

Submitted to Scottish Government (online)

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

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

Yes. In 2014, my predecessor, Rosemary Agnew, responded to OSCR's Targeted Regulation consultation, agreeing with the proposal to publish accounts for all charities, beginning with SCIOs and charities with income of £25,000 or more. I support OSCR having an explicit power to publish annual reports and accounts on the Charity Register, consistent with other charity regulators in the UK, who are under a duty to have such information 'open to public inspection'.

Making these documents available to the public promotes transparency and openness. It also meets stakeholder demand to increase accountability in charities. In research conducted on my behalf by IPSOS Mori in March 2017, 77% of those surveyed stated they would be more likely to trust an authority that publishes a lot of information about its work. Although this survey was about public authorities, the same may be inferred of other organisations such as charities. This finding is echoed by OSCR's own research (2018) where 88% of respondents thought knowing how much of their donations went to the cause would improve trust in a charity.

Members of the public already have an entitlement, under section 23(1)(b) of the Charity and Trustee Investment (Scotland) Act 2005, provided the request is reasonable, to request and be given the latest statements of accounts from the charities themselves. If people can access the information on the OSCR website, they may be less likely to make a request at all, potentially saving charities the work of having to provide copies on request.

Members of the public also have a right under Freedom of Information (FOI) law¹, subject to various restrictions, to request from OSCR the information it holds about charities. Publishing charity annual reports and accounts will also reduce the need for the public to make requests for this information from OSCR under FOI. A reduction in requests requiring individual responses will free up resource.

Question 2 - Do you think there is any information in charity annual reports and accounts that should not be published on the Scottish Charity Register?

¹ Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.

Currently, when charities provide the documents to OSCR, the information in the documents becomes "FOI-able". That is, there is a statutory entitlement under FOI law to request the information from OSCR and, in many cases, to receive it. Should OSCR decide that any information cannot be disclosed, it must identify the appropriate exemption or exception which would lawfully allow it to withhold the information. The same considerations are relevant to decisions to publish information.

It is asked whether there should be any information in Charity Reports and Accounts which should be exempt from publication. I recommend that any such exemptions should be no wider in scope than the exemptions and exceptions in FOI law which provide sufficient protection for information that cannot be disclosed. If any exemptions are drawn more broadly, the information could still be sought via an information request to OSCR. Such a system is therefore less likely to reduce requests, and would undermine many of the benefits of proactive publication.

Question 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?

Again, I recommend that any dispensation is no wider in scope than the exemptions and exceptions in FOI law.

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

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

I recommend that any dispensation is no wider in scope than the exemptions and exceptions in FOI law. In this case, the exemption in section 39(1) of FOISA (Health, safety and the environment) may be a relevant provision.

Section 4: A power to issue positive directions to charities

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

As a fellow regulator, it is my experience that regulators require sufficient power to compel compliance with requirements or good practice.

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