

Response ID ANON-ZJF2-PHHQ-D

Submitted to **Consultation on Scottish Charity Law**

Submitted on **2019-03-28 15:39:25**

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.:

In principle we agree, subject to ensuring that no one should thereby be put at risk of violence, intimidation or abuse. Section 3(4) of the Charities Act makes provision for the withholding of certain information in certain circumstances and this should extend where appropriate to publication of accounts.

2 Do you think there is any information in charity annual reports and accounts that should not be published on the Scottish Charity Register?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Please say what information you think should not be published.:

Any information providing personal contact details (eg addresses, telephone numbers) should not be published.

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?

Yes

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?):

This should be permissible where there are grounds for believing that the safety or security of people or property may be put in jeopardy.

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?

No

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?):

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):

We consider that it is appropriate for OSCR to maintain an internal database. However, we would wish the duties on charities in relation to the updating of trustee details to be light touch. We would suggest that updating of such information might be required on an annual basis as part of the process for completing the annual return. This would recognise the administrative burden placed on small charities with limited administrative resources, the risk of innocent oversight in providing the information or the needs of larger charities with large numbers of trustees.

The information so held should be proportionate and have due regard to individuals' rights in relation to data protection. We would suggest that a database comprising name, contact address and date of birth should be adequate for OSCR's purposes.

We would be opposed to the idea that the register should be public. Trustee names are already listed in charity accounts and the principal charity address is also

on the Charity Register. In an age of increased concern in relation to the misuse of personal data, we believe that to publish names and full contact details would deter people from becoming charity trustees which would thereby impair the sector generally.

If, contrary to our view, a public register is to be created, we would suggest that it should be limited to names only, without any contact or other identifying details.

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)::

We question whether there is a need to extend the criteria for disqualification and removal to senior management positions. Charity trustees are responsible for appointing people to such senior roles and we would expect the trustees to monitor performance and address any failures appropriately in accordance with accepted HR practice.

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?):

Whilst answering yes to the foregoing questions we would not expect such powers to be exercised in relation to Designated Religious Charities which in effect have their own regime.

Also, in relation to the power to issue positive directions, we would suggest that proportionality would be important with the need for an appropriate process for review of any decisions made by OSCR when exercising such powers.

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?

No

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?

Not Answered

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):

We question whether there is a need for a positive power to be given to OSCR to direct the preparation of accounts, given OSCR's existing powers under Section 45 of the Charities Act.

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 what is meant by "connection" would need clear explanation.

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.:

Again, any new powers should be proportionate

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?

No

Please explain your answer.:

We question this suggestion. If such a requirement were to be introduced, it would mean that following de-registration, a former charity would still need to meet the public benefit test, notwithstanding that it was no longer a charity. The concept of "public benefit" may change over time and if assets had previously been donated on an understanding of "public benefit" at the time of donation, it would be inappropriate to prevent application of such assets to the original purposes of the charity, notwithstanding a subsequent change in the understanding of public benefit.

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.:

This seems appropriate to protect the reputation of the charity sector in the public mind.

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?

Yes

Please explain your answer.:

This would be a helpful clarification.

About you

What is your name?

Name:

John Stuart

What is your email address?

Email:

secgen@scotland.anglican.org

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Administration Board of the General Synod of the Scottish Episcopal Church

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?:

Neither satisfied nor dissatisfied

Please enter comments here.:

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.:

Where a response is being made on behalf of an organisation, there does not appear to be a straightforward means of downloading the draft response to circulate round, for example a trustee body for approval, prior to submitting the response. It would be helpful if there were a facility to save the draft response as a document (for example in Word) which a prospective respondent could then use to obtain internal comment/approval prior to final submission.