

## **Introduction**

### **What are we consulting about?**

1. It has been 17 years since the Scottish Charity Law Review Commission (the 'McFadden report') proposed establishing a Scottish Charity Regulator and more than 13 years since the passage of the Charities and Trustee Investment (Scotland) Act 2005 which established the legislative framework for charities in Scotland.
2. As a government we have a responsibility to ensure that the legislative framework is fit for purpose and is protecting and serving the public interest.
3. Under the 2005 Act OSCR has a general function to give information or advice, or to make proposals, to the Scottish Ministers on matters relating to its functions. OSCR have used their experience to provide proposals, which focus primarily on increasing transparency, accountability and public trust, to Scottish Ministers for consideration.
4. We have also recently had cause to consider whether the regulatory system remains appropriate for preserving public trust, taking into account the evolving challenges being faced by the sector. In the wake of recent safeguarding concerns both at home and abroad; as well as a range of governance concerns and examples of charitable status being abused, it is more important than ever that charities and trustees operate transparently and are accountable for their actions.
5. We are also aware of the developments in charity law in the rest of the UK, and the implications of different regimes for charities, for example differences in trustee disqualification criteria. We are open to learning from these developments, especially where they could leave Scotland and the Scottish charity sector vulnerable.
6. Therefore, in light of the changing environment and OSCR's proposals, we feel the time is right to consult on potential updates to the charities legislation that would promote transparency, accountability and trust to ensure the public continue to have confidence in both the sector and OSCR.
7. Whilst the issues highlighted in this consultation mainly derive from OSCR's proposals, we remain open as to what if any changes are required to the statutory framework, and will be guided by the consultation responses.

### **Who do we want to hear from?**

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8. We are seeking views from members of the public, the charity sector, and anyone with an interest in charity law. We want to learn from the sector's expertise and experience and hear first-hand about what really makes an impact on levels of public trust and confidence.

9. The consultation is set out in ten sections. You do not have to complete every section in the consultation if you do not wish to. However, where you have provided a yes or no answer to a question it would be helpful if you could explain your answer where requested.

### **Responding to this Consultation**

10. We are inviting responses to this consultation by 1 April 2019.

11. Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at: <https://consult.gov.scot/local-government-and-communities/scottish-charity-law>.

12. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 1 April 2019.

13. If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

*Charity Law and Volunteering Team  
Scottish Government  
3H North,  
Victoria Quay  
Leith  
EH6 6QQ*

### **Handling your response**

14. If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

15. All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore

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have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

16. If you are unable to respond via Citizen Space, please complete and return the [Respondent Information Form](#) included in this document.

17. To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

### Next steps in the process

18. Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

19. Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

### Comments and complaints

20. If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at: [Thirdsector@gov.scot](mailto:Thirdsector@gov.scot).

### Scottish Government consultation process

21. Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

22. You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

23. Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy

- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

24. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

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

25. All charities in Scotland are under a legal duty to prepare annual reports and accounts, which they then submit to OSCR. There is no legal requirement for those reports and accounts to be published on the Scottish Charity Register. If a member of the public wants to see a charity's most recent statement of accounts, they can make a request to the charity directly.

26. Over the past few years OSCR has been implementing a programme of 'Targeted Regulation' – part of this is an effort to increase public trust and confidence in the sector by making more information about charities publicly available. As part of this programme, since April 2016 OSCR has been publishing the accounts of charities with an income over £25,000 and all Scottish Charitable Incorporated Organisations (SCIOs). This accounts for around half the charities registered in Scotland.

27. In order to comply with data protection legislation<sup>[1]</sup> OSCR has been redacting all personal information from the accounts before publishing (including charity trustee names and signatures, photographs and the signatures and personal details of independent examiners and auditors). This potentially diminishes the utility and quality of the accounts, as well as being a significant administrative burden.

28. An option here is to give OSCR an explicit power to publish annual reports and accounts of all charities in full, including personal information (with the exception of signatures), on the Scottish Charity Register. This is consistent with other charity regulators in the UK.

29. When OSCR consulted on their Targeted Regulation programme in 2014, while a small number of concerns were raised over privacy, as well as the possibility of accounts being misinterpreted or used in an unscrupulous fashion, there were high levels of support among charities and other interested parties for the publishing of accounts. OSCR's surveys in 2016 and 2018 on public attitudes to charities also

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found that the majority of respondents stated that open access to accounts would improve their trust in charities.

**Question 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 in the box below your answer including any potential benefits/risks:

The Institute of Fundraising is supportive of this proposal. Publishing charity annual reports and accounts can help to increase transparency across the sector around where charity money comes from and how it is spent, allowing the public to better understand how their donations are used. Annual reports are an opportunity for charities to tell their story and explain to the public what they do and how they use charitable funds. It is a chance to show how charities are delivering their core purpose and missions and highlight what impact their interventions are having on a particular cause. Transparency is vital for driving both public confidence and understanding of charitable organisations, and increases the accountability of charity governance.

However, while we are supportive of the proposals, we also believe that there is an opportunity for the annual reports and accounts to do more – the impact that charities have cannot only be explained through publication of financial data and figures. We would welcome any further thought to go alongside the publication of annual reports and accounts which focus more on impact and telling the stories that people will respond to which shows how a charity is making a difference for their beneficiaries. We are also mindful that while the publication of financial information is needed for transparency, this can sometimes lead to an unwelcome comparison of ROI (return on investment) between completely different charities and artificial benchmarks set around the use of 'admin' or 'overhead' spend. We would welcome consideration about how the publication of accounts can be used as an opportunity to explain better how a modern charity works.

**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?

**Yes**

Please say what information you think should not be published in the box below:

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There should be limits to the personal Trustee information (such as the information highlighted in section 27) that can be published. We also believe that any information that could be used to defraud charities or trustees should be redacted from open publication. While we support transparency as the main focus of the change, we would like to ensure that trustees are comfortable with the information that is published - it would be counter-productive if the amount of information available in the public realm discouraged applications for trustee roles.

**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?

**Yes**

Please explain in the box below 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?)

We believe that transparency should be the default with the publication of reports and accounts, with dispensation (exemption) only being available in exceptional circumstances. For example, if an ongoing court case has not yet been concluded this may impact the legitimacy or validity of information provided. We believe that it would be useful for OSCR to publish the broad guidelines of when/if a dispensation can potentially apply so that charities and the public have a general idea of when certain circumstances might mean that an exemption is appropriate.

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

30. There are over 24,000 charities in Scotland and it is estimated that there are over 180,000 charity trustees. Charity trustees are the people who have general control and management of the administration of a charity, and have legal duties relating to ensuring that the charity works to achieve its purposes.

31. At present OSCR holds limited information on Scotland's charity trustees. The law only requires the Scottish Charity Register to set out the principal office of the charity or the name and address of one of its trustees. Charity accounts also list trustee names, but these can become out of date.

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32. Actively obtaining trustee details from all charities could give OSCR valuable and relevant information to better support effective regulation of charities and their trustees, through improved compliance, investigation and engagement work.

33. One option is to require OSCR to establish a new register of trustees. This could comprise an internal database for OSCR's use only and a reduced external register for public use.

34. As well as current trustees, such a register could include the names of any person removed as a trustee following an inquiry by OSCR under the 2005 Act or preceding legislation.

35. As well as trustee names, an internal database could include, for example, dates of birth (for identification purposes), home addresses and email addresses.

36. The external register could contain trustee names (including removed trustees) and a principal office or trustee contact address against each charity entry.

37. Publishing the names of trustees on a public register, as is the case with charities registered in other parts of the UK, would increase transparency and accountability to the public.

38. The issue of developing a trustee database was explored in OSCR's 2014 Targeted Regulation consultation and, while respondents did see benefits in terms of increasing transparency and supporting OSCR's regulatory functions, others considered that the risks outweighed the benefits. Most concerns centred around the privacy of data, but there were also concerns that publishing trustee names on an external register might discourage people from becoming trustees, and that providing the information could create a burden for charities.

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

**Yes**

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

**Yes**

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

**Yes**

**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?

**Yes**

Please explain in the box below 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?)

We believe that there should be an opportunity for trustees to apply for a dispensation where there is a compelling reason or set of circumstances which could result in undue harm to the individual. There should not be a right for dispensation, but it could be granted where there is an assessment that publishing a trustees name or details could risk placing them in danger or result in other undue harm.

We suggest that a broad outline of the criteria that OSCR might consider in an application for dispensation is published so that everyone knows the overall framework and why a case for dispensation might be made.

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)

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

39. Categories of person automatically disqualified as charity trustees in Scotland are:

- Someone with an unspent conviction for an offence involving dishonesty or an offence under the 2005 Act.
- Someone who is an undischarged bankrupt or has a [Protected Trust Deed](#).
- Someone who has been removed under either Scottish or English Law or the courts from being a charity trustee.
- Someone who is disqualified from being a company director.



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40. Recent changes to the equivalent legislation for England and Wales have extended disqualification criteria for charity trustees, to include the following (as well as making all disqualification criteria applicable also to senior employees):

- Unspent convictions for perjury, perverting the course of justice, misconduct in public office, contempt of court and specified bribery, terrorism and money laundering offences.
- Individuals subject to terrorist asset freezing orders.
- Disobedience of specified Charity Commission orders.
- Individuals subject to notification requirements of Part 2 Sexual Offences Act 2003 (on the Sex Offenders register).

41. This means that there are inconsistencies across the UK in respect of the criteria for disqualification and removal of trustees.

42. To ensure these criteria in Scotland are fit for purpose, one option is to extend them to match the criteria for disqualification in England and Wales, with the provision that individuals can still apply to OSCR for a waiver from disqualification as the law currently allows.

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

**Yes**

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

**Yes**

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)

#### **Section 4: A power to issue positive directions to charities**

43. OSCR has legal powers to issue specific types of direction to charities and charity trustees. The purpose of some of these powers is to protect charities' assets

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or to remedy and/or prevent further misconduct by trustees where a risk has been identified as a result of OSCR's inquiries.

44. Most of OSCR's powers are interdictory or preventative, requiring charity trustees or others not to take particular actions. OSCR cannot direct charity trustees to take a specified positive action to remedy non-compliance or protect charitable assets.

45. One option would be to give OSCR a power to issue positive directions. The Charity Commission for England and Wales and the Charity Commission for Northern Ireland both have a wide ranging power of positive direction. Experience to date is that the powers have been used sparingly.

46. If OSCR had such a power this could enhance its inquiry and enforcement powers in terms of protecting charitable assets and supporting good governance.

47. Examples could include the power to direct a charity to:

- appoint additional trustees (for example, in order to form a quorum or meet a minimum specified in a governing document).
- take a specific action in line with the charity's governing document (for example, hold an AGM to make a specific decision).
- manage a conflict of interest effectively and demonstrably.

48. A positive direction could be coupled with a corresponding obligation on OSCR to publish an associated inquiry report, which could improve public confidence that OSCR were taking positive steps to remedy misconduct and protect assets.

49. If a charity failed to comply with a positive direction that OSCR had issued, it could be classed as misconduct. This could mean that enforcement action would be taken against the charity or trustees as appropriate. This is currently the case if a charity fails to comply with a direction from OSCR.

50. The Scottish Parliament Public Audit Committee has recommended that Scottish Ministers review OSCR's powers in this respect<sup>[2]</sup>.

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

**Yes**

**Question 11.** If you answered Yes to question 10, should a power to issue positive directions be wide ranging or a specific power? Please select one below:

## **A specific power**

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

**Yes** (potentially, but not automatically)

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?)

OSCR should be able to issue a positive direction where it is needed to ensure that Trustees are appropriately managing their charity in a lawful way. This would enable OSCR to proactively manage risks and enable the regulator to step in through an agreed regulatory enforcement mechanism. It is important that OSCR has the ability to safeguard public trust and confidence in the charity sector through being able to issue a positive direction – although clear guidance will need to be transparently set out to provide clarity over the circumstances when this power could be used and the process it will follow.

If a charity was to fail to comply with a positive direction then it should be investigated to assess whether there is a potential case of trustee misconduct. Rather than automatically class it as trustee misconduct, the situation should be reviewed and a judgment on potential misconduct made which takes into account the circumstances and context. There could be mitigating factors that might mean that the trustee's actions did not qualify as 'misconduct' (if they genuinely tried their best or acted in good faith etc) and these would need to be taken into account. It is not clear as well whether this would be the whole board (all the trustees) facing potential misconduct for failure to comply with a positive direction, or whether it is individual trustees – clarity on this point would be welcome.

## **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**

51. All charities in Scotland are under a legal duty to prepare annual reports and accounts, and submit these to OSCR. Failure to do so can be regarded as misconduct in the administration of a charity.

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52. There are currently a number of charities on the Scottish Charity Register for which OSCR does not have up to date reports and accounts; some of which have never submitted accounts. It is thought that a number of these charities no longer exist but have failed to notify OSCR to be removed from the Register. OSCR endeavours to understand and pursue defaulting charities, but with limited return.

53. While OSCR has a legal power to appoint someone to prepare accounts for a charity, and has the power to make inquiries into charities, it can only use these powers if it has current information on where the charity trustees or principal office is.

54. Having little or no information about a charity's finances and activities can undermine public trust and confidence in the sector, as it is difficult to know how public money and assets are being accounted for or whether a charity is providing any public benefit. This could also undermine trust in OSCR if it is deemed to have insufficient powers to deal with defaulting charities.

55. One option is to give OSCR a discretionary power to remove from the Register charities that have persistently failed to submit accounts.

56. This could enable OSCR to remove charities from the Register as a sanction for not submitting their accounts without requiring OSCR to also prove that the charity is not meeting the charity test or providing public benefit.

57. Another option is to give OSCR a power of positive direction which would enable OSCR to direct a charity to prepare accounts. OSCR could be required to publish an associated inquiry report which could appear next to the defaulting charity's entry on the Register.

58. Failure to comply with a direction could be classed as misconduct. This could mean that enforcement action would be taken against the charity or trustees as appropriate. This is currently the case if a charity fails to comply with a direction from OSCR. However, if OSCR does not have up to date trustee or principal contact information, it could still prove difficult for OSCR to take enforcement action.

**Question 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**

Failure to submit annual reports/accounts means that the charity has not complied with essential duties and responsibilities that ensure accountability and good governance across the sector. However, considering that small charities often face capacity issues that make it difficult to submit accounts, it is

important that this action is only exercised as a last resort and only if it is a persistent and enduring failure which cannot be resolved. It should be a power that is only used in exceptional circumstances – if the charity is still providing services and working for its charitable objectives, then the removal from the register could harm service users and beneficiaries which must be avoided.

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

**Yes**

**Question 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** (potentially, but not automatically)

**Question 16.** 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 are mindful throughout this consultation response of the need to bear in mind any mitigating circumstances and context, particularly with regard to the challenges that small charities face in this area, and are concerned about classifying trustee misconduct by default. The routes to appeal or review decisions in this and other new areas also need to be clear and proportionate.

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

59. To be a registered charity in Scotland a body must have wholly charitable purposes and provide public benefit, but there is no requirement for the body to have any connection to Scotland (with the exception of SCIOs). This means that OSCR may be compelled to register a charity that meets the charity test but has no activities in Scotland and no trustee connection with Scotland.

60. If a charity has no connection to Scotland it can make it more difficult for OSCR to effectively regulate them. This is because it can be difficult for OSCR to ascertain what activities the charity is carrying out and how they are providing public benefit. There is also a higher risk of OSCR losing touch with such charities.

61. One option would be to require all charities in the Scottish Charity Register to have, and retain, a connection to Scotland. This would not preclude the registration

of cross-border charities, which could continue to register with both the Charity Commission for England and Wales and OSCR.

62. However, it would mean that charities established under the law of a country or territory other than Scotland, which are managed or controlled wholly or mainly out with Scotland, do not occupy land or premises in Scotland and do not carry out activities in any shop or similar premises in Scotland, would no longer be able to be entered on the Register.

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

**Yes**

Please explain in the box below why you think yes or no:

It is important that charities registered in Scotland are required to have and retain a connection with Scotland; whether that's where they are based, raise money, or deliver their services (among others). We would be supportive of this proposal as we think it would lead to a positive impact on the closer relationship between the charity sector in Scotland and OSCR, as well as demonstrate confidence in Scottish charities to the public.

However, if this change resulted in charities being 'de-registered' then this needs to be carefully considered to ensure that charities are not left in limbo or suffer difficulties with their registration. We also are mindful of the potential 'two tier' effect with existing charities currently registered operating under a different framework from new charities that were to register with OSCR and would welcome clarity on how this would operate.

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

63. The Court of Session, on application from OSCR, has the power to permanently disqualify the following individuals from being charity trustees:

- former charity trustees of a body which is no longer a charity
- former trustees of 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.

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64. However, OSCR does not have the power to make inquiries into a body which is no longer a charity, a body which is no longer controlled by a charity or a charity which has ceased to exist. This means that if OSCR is not aware of potential misconduct before a charity ceases to exist, before the charity is removed from the Scottish Charity Register (either at its request or OSCR's power of removal), or while a body was controlled by a charity, OSCR cannot open an inquiry if information subsequently comes to light.

65. If OSCR cannot open an inquiry, it cannot gather the necessary evidence to allow it to make an application to the Court of Session.

66. This poses a risk that trustees who are guilty of serious misconduct could go on to be trustees of other charities if the misconduct was only discovered after the charity in question ceased to exist or was removed from the Register.

67. One option would be to give OSCR the power to make inquiries into a body which is no longer a charity, a body which is no longer controlled by a charity or a charity which has ceased to exist at any time, to allow them to gather the necessary evidence to make an application for permanent disqualification to the Court of Session.

**Question 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 in the box below why you think yes or no:

OSCR should be able to gather enough evidence to disqualify past trustees from taking up new posts if they are found guilty of misconduct, even if this is retrospective. However, clear boundaries laying out the conditions under which this power can be exercised should be published so all trustees (current and former) know their responsibilities and potential liability.

Consideration of the need to safeguard the reputation of the charity sector should come first, so making inquiries into former trustees is a power that should be able to be used where needed.

Guidance and a framework on when/how an inquiry could take place would be welcome.

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

68. If a charity is removed from the Scottish Charity Register but continues to operate as a non-charitable body, it is under a duty to use the assets it held before it de-registered for the charitable purposes then set out in its Register entry. The former trustees are also under a duty to submit statements of account for the pre-removal assets of the body to OSCR on an annual basis. OSCR continues to monitor the assets until they are spent or become negligible.

69. While any such 'pre-removal' assets must be used for charitable purposes, there is no requirement for them to be used to provide public benefit. This means that assets that have been built up during the life of the charity could potentially be used in ways that did not provide public benefit and for private gain.

70. One option is to require bodies that have de-registered as charities to continue to use the assets held at the time of removal from the Register to provide public benefit.

71. This could increase public trust as it would guarantee that any funds or assets that have been donated to a charity must continue to be used to for public rather than private benefit, even if the charity de-registers.

72. However, it could also create an additional burden on bodies that have de-registered to continue to provide public benefit with their pre-removal assets despite no longer benefitting from charitable status.

**Question 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 in the box below why you think yes or no:

These assets would have been acquired in order to fulfil the charitable purpose – if the assets consist of fundraised income then this would have been donated for said purpose. To use the assets for anything other than public benefit would amount to misleading donors, with corresponding impact on public trust. That said, this action needn't necessarily be taken by the de-registered charity. The same outcome could be achieved by handing over assets to an organisation with a similar charitable mission.



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

73. OSCR can legally require any person (third party) to provide information which it considers necessary for its inquiries about charities. If OSCR requests such information about a charity from a third party, it must also give notice to the charity in question that it is the subject of the request, and provide the charity with the right to review.

74. However, the legislation does not take account of situations where the body in respect of which information is sought is not a charity. For example OSCR cannot serve such a notice on:

- a body or individual that is misrepresenting themselves as a charity,
- bodies which are no longer charities in respect of property they had at the time of removal from the Register,
- former trustees of charities which have ceased to exist.

75. The effect of this is that OSCR cannot require a third party to provide information as it cannot serve the required notice on a charity. This potentially hinders OSCR inquiries as it cannot access all the information it may require.

76. One solution is to give OSCR the power to give the required notice to a body or individual that is misrepresenting themselves as a charity, bodies which are no longer charities and former trustees of charities which have ceased to exist.

**Question 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**

77. In the situations where OSCR is requesting information from a third party about a charity to help with its inquiries, and there is a charity to notify that they have made the request, OSCR must adhere to certain notice periods.

78. The notice periods are:

- OSCR must give the charity that is subject of the request for information 14 days' notice of its decision to request the information from the third party.

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- Within 21 days of receiving that notice, the charity can request OSCR to review its decision to request the information.
- OSCR must, within 21 days of such a request, review the decision and give notice of the outcome of the review to the charity.

79. The legislation could perhaps be clearer on:

- whether all three notice periods need to have expired in full (i.e. 56 days) before OSCR can see the information from the third party; and
- whether a charity, which does not request a review within 21 days of receiving the notice, can see the information from the third party once that 21 day period has expired.

80. As there is potential ambiguity in the legislation, OSCR's current approach is to wait for all three time periods to expire in full before viewing the information from the third party. This potentially increases the amount of time it takes for OSCR to make its inquiries, which can be detrimental to all parties involved.

81. An option is to clarify that these time periods can overlap. This could reduce the time it takes for OSCR to make inquiries as it would have access to the information it needs sooner.

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

**Yes**

Please explain in the box below why you think yes or no:

This will increase transparency and understanding for all involved in these processes.

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

82. Reorganisation can be a valuable tool for certain charities in Scotland. A reorganisation scheme can enable them to modernise their governance or purposes and to release unused or underused funds for public benefit.

83. If charities want to reorganise they need to apply to OSCR for approval; however it is not clear in the legislation whether it is competent for OSCR to approve

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reorganisation schemes proposed by certain charities established under a royal charter, warrant, or enactment.

84. While this issue only affects a very small number of cases, there has been substantial expense to the charities involved and consequent use of parliamentary time, putting through private bills that could have been avoided if the legislation was less ambiguous.

85. One option would be to clarify the legislation to make clear whether OSCR can approve a reorganisation scheme for charities that have been established by royal charter, warrant or enactment.

**Question 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 in the box below why you think yes or no:

This will simplify the process, which will improve transparency and understanding for all involved, and decrease the bureaucratic burden that comes with navigating opaque processes. OSCR has the appropriate expertise to advise in this area in the public's best interest and that of the charity/sector.