
Briefing: Charities (Regulation and Administration) (Scotland) Bill

Social Justice and Social Security Committee
Thursday 2nd March 2023

Introduction

Volunteer Scotland responded to the recent Social Justice and Social Security Committee consultation on the Charities (Regulation and Administration) (Scotland) Bill. This briefing, written to support our invitation to give evidence to the Committee on the 2nd March 2023, provides a summary of the points made in our response to the consultation, plus a review of complementary points made in some of the other submitted responses.

Changes in the Charity Sector

As with the rest of society, charities have experienced seismic shifts in the past 3 years as a result of the Covid-19 pandemic and the recent cost of living crisis. These changes have had a profound impact on the ways that charities operate, and on those who govern them.

The Covid-19 pandemic led to many charities adopting new and innovative delivery models, as well as embracing different ways to generate income. It also shone a light on the vital role of charities in community resilience, especially given their ability to respond to crises in a rapid and dynamic manner ([‘The Road to Recovery’](#), 2022, Volunteer Scotland). However, the crisis led to many trustees feeling increasingly fatigued in these voluntary roles, particularly given that this was often additional to the challenges presented in their paid work ([‘November COVID-19 survey: Volunteers and Trustees Supplementary’](#), 2021, OSCR).

The cost of living crisis appears to be compounding the challenges caused by the pandemic and evidence suggests that many organisations are struggling with volunteer recruitment ([‘Scottish Third Sector Tracker: Wave four findings’](#), 2022,

SCVO, Scottish Government and other funders). As a result of this landscape, it is vital that any new legislation regarding charity governance does not present additional barriers to trustees, particularly given their status as volunteers.

Promoting Inclusion

We would agree with the statement in the Equality Impact Assessment Report that:

‘There is a potential for marginalised communities and individuals to be impacted more greatly by this proposal. The inclusion of this change to legislation would mean that an individual who is, for example, an undischarged bankrupt would be disqualified from holding a senior management position within a charity.’

Whilst we welcome the improvement in clarity for trustees regarding their roles and responsibilities presented in the Bill, and the provision to ensure that vulnerable trustees are able to apply for their names not to be made public on the charities register and in accounts records, we don’t feel it goes far enough to address the chronic lack of diversity in charity boards ([‘Trustee diversity: who is applying, and who is appointed?’](#), 2021, Reach Volunteering).

In particular, the fact that undischarged bankruptcy prevents individuals from becoming a trustee will likely exclude a range of individuals from under-represented groups from participating – a point reinforced by other respondents including SCVO and Scottish Women’s Aid. With this in mind, we would ask that the Bill considers an appeals process similar to that for withholding personal details from the public register where personal circumstances are taken into consideration.

Zero Tolerance raised another similar point in their response to the consultation. They suggested that:

‘Extending disqualification to senior managers and trustees may have an impact on charities who work with ex-offenders. These charities 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. We support the establishment of a clear and concise waiver application process.’

Similarly, Foundation Scotland, in their response to the consultation, stated that:

‘Recruiting and retaining Trustees may be more challenging for charities who particularly value Trustees with lived experience of a particular issue. Foundation Scotland is concerned that the proposed waiver system... is not flexible enough and navigating this process could consume a lot of time alongside creating stressful situations for Trustee [sic], volunteers or staff.’

As a result of this combined feedback we feel that greater consideration is required, both in this Bill and in any wider charity review, to increase trustee diversity. In our response, we spotlighted the approach adopted by Who Cares? Scotland that at least five of their board members should have care experience ([‘Our Board’](#), 2022, Who Cares? Scotland).

We believe that a concerted effort is required by OSCR to better understand this diversity challenge through dedicated research into this issue, and that a wider review on charity law at a later date could help to address the barriers to participation that emerge. However, it is vital in the meantime that this Bill does not present additional barriers to participation for trustees from under-represented groups.

Bureaucratic Burden

We believe that the Bill, in theory, should make it easier to start and run a charity. From a trustee perspective, expectations on trustees would be much clearer, particularly with regard to the information OSCR holds about them. The tightening up of arrangements regarding the provision of contact details should also help to prevent future challenges where OSCR struggle to contact charities about requirements.

However, we will not know the true impact of this legislation on charities, and their trustees, until it is clear how OSCR intend to communicate and implement the new measures. This is not clarified within the detail of the Bill.

Representatives from the faith community, in their responses to the consultation, highlighted that their congregations often rely heavily on volunteers as trustees and that any increase in administrative burden could present a significant challenge. The United Reformed Church Synod of Scotland stated that:

‘Each United Reformed Church in Scotland supported by the Synod of Scotland is a separately registered charity relying on volunteers to administer the church. Additional reporting requirements will increase the burden on these churches.’

Similarly, the Church of Scotland stated that:

‘All congregations and Presbyteries in the Church of Scotland are separately registered charities and rely on volunteers. Any additional reporting obligation imposed by the Bill will directly increase the administrative burden for these charity trustees. A small charity with no administrative support may find this a greater burden than a large charity which can employ staff to ensure that reporting obligations are met.’

These responses reflect the potential challenges faced by a range of small charities that are predominantly reliant on volunteers, not just those from the faith community. One individual, in their response to the consultation, summed up the risk of increased administrative burden on trustees by stating the following:

'It is no use telling a prospective trustee that they have to understand all the intricacies of charity legislation before actually volunteering, they just walk away. Quite how this can be tackled is another story!'

It is also vital that the measures introduced to promote inclusion and trustee safety do not add to the bureaucratic burden faced by trustees. We agree with the point raised in the responses from both Zero Tolerance and Edinburgh Rape Crisis Centre that:

'We understand the necessity of transparency and accountability in the charity sector but in practice, the process for applying for dispensation of Trustees to ensure confidentiality and safety could place an increased administration burden on Trustees and charities. We support the establishment of a non-bureaucratic dispensation process.'

With this in mind, we believe that OSCR need to commit to consultation with the wider charity sector to understand the needs of charities, particularly smaller charities, and their trustees in terms of implementation and communication. Consideration should also be given to the needs of prospective trustees, particularly those from marginalised groups, and any questions or concerns they might have about becoming a trustee in light of these changes.

Interim Trustees

It remains unclear how OSCR would implement the power to appoint interim trustees in the event of a charity having no trustees or the existing trustees cannot be found or are unable or unwilling to act. As such, further information is required regarding how this recruitment would take place, and the provision that would be made to ensure that interim trustees have the skills and experience to work in the best interests of the charity.

Further Information

For further information about this issue, please refer to our [full response to the Charities \(Regulation and Administration\) \(Scotland\) Bill](#) or contact our Policy Officer, Sarah Latto.