

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

Evidence session with the Office of the Scottish Charity Regulator (OSCR)

Introduction

As the independent regulator and registrar for Scottish charities, OSCR oversees the compliance and governance of charitable organisations in Scotland. This paper provides an overview of OSCR's activities, strategic priorities, and legislative context, with a particular focus on the [Charities \(Regulation and Administration\) \(Scotland\) Act 2023](#).

The Committee will hear from:

- Marieke Dwarshuis, Board Chair
- Martin Tyson, Head of Regulation and Improvement

This evidence session examines OSCR's **operational framework**, funding, staffing, and corporate governance, detailing the organisation's efforts to regulate and support over 25,000 registered charities in Scotland.

It also covers the amendments made through the Charities (Administration and Regulation) Scotland Act 2023 introduced during the legislative process aimed at refining charity regulation and compliance mechanisms. Key themes include the introduction of a review and appeal process for disputes, the treatment of income from endowments, and the clarification of charity constitutions.

Additionally, this evidence session discusses OSCR's **strategic priorities for 2024-2026**, focusing on public access to information, regulatory compliance, and the provision of guidance and support to charities.

This session also aims to review OSCR's **performance**, address any concerns, and ensure that the regulatory framework continues to support the charity sector's resilience and positive impact on society. The Committee's engagement with OSCR is intended to provide assurance that OSCR is fulfilling its role in providing a transparent, accountable, and effective regulatory environment for Scottish charities.

This paper is structured around 5 themes:

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About OSCR

The [Office of the Scottish Charity Regulator \(OSCR\)](#) operates as a non-ministerial entity within the Scottish Government, responsible for overseeing charitable organisations in Scotland. OSCR is the independent regulator and registrar for Scottish charities including community groups, religious charities, schools, universities, grant-giving charities, and major care providers. As of 3 June 2024, the [total number of charities registered with OSCR was 25,072](#).

OSCR describes its purpose as the following:

“Our mission is to regulate in a way which builds trust and confidence in Scottish charities, holds charities to account and strengthens their ability to positively contribute to society.”

OSCR was created in 2005 following commencement of the [Charities and Trustee Investment \(Scotland\) Act 2005](#). It is independent of Scottish Government and reports directly to the Scottish Parliament every year.

Theme 1: Strategy and priorities

OSCR’s [Corporate Strategy 2023-26](#) presents their five priorities for 2023-2026:

1. We will ensure the public have access to the information they need about charities in Scotland and how they are regulated.
2. We will provide charities with the tools and guidance they need to meet regulatory obligations.
3. We will deliver smart, responsive, and effective regulation that positively impacts on Scotland’s charity sector and its beneficiaries.
4. We will focus on our people and have a motivated, flexible, and well supported workforce.
5. We will maintain a focus on best value, continuous improvement, and collaboration.

Additionally, the Corporate Strategy lays out the timeline for reviewing and updating strategy as well as other major pieces of work.

Timelines for strategies

2023-24	2024-25	2025-26
Digital Strategy 2023-26		
Equality Strategy 2023-26		
Communications Strategy 2023-26		
People Strategy 2022-25		People Strategy 2026-27
Knowledge Management Strategy 2021-23	Knowledge Management Strategy 2024-26	
	Implementation of Charities (Regulation and Administration) (Scotland) Bill	

OSCR states that its strategy and priorities for the work in 2024-25 include:

1. Reviewing and Updating Strategies:

- **People Strategy:** The People Strategy will be reviewed and updated to ensure it aligns with the evolving needs of the organisation and its workforce.
- **Knowledge Management Strategy:** This strategy will also be reviewed and updated to enhance how OSCR manages and utilises knowledge within the organisation.

2. Implementation of the Charities (Regulation and Administration) (Scotland) Act:

- The implementation of various aspects of this Act will continue throughout the period, ensuring that the new legislative changes are effectively integrated into OSCR's operations.

3. Focusing on staff:

- OSCR will continue to support its workforce by building individual capabilities, aligning individual goals with business priorities, and maintaining a flexible and supportive working environment.
- Regular reviews and reports on the progress of the People Strategy will be conducted.
- The organisation will ensure that staff and Board members work in partnership, leveraging everyone's expertise and providing a platform for all voices to be heard.

4. Best Value, Continuous Improvement, and Collaboration:

- OSCR will focus on improving efficiency and effectiveness by reviewing contract management, shared services with other public sector bodies, and removing regulatory duplication where charities are regulated by multiple bodies.

- The organisation will develop and publish an annual business plan outlining key business and resource priorities.
- Digital solutions will be identified and implemented to streamline processes and improve operational efficiencies.

According to OSCR, it is expected that the majority of work done by OSCR in 2024-25 will be based around the implementation of the Charities (Regulation and Administration) (Scotland) Act. It will be important to understand how this work will be undertaken in addition to the standard work already done by OSCR.

Regulatory priorities

OSCR's role and functions are defined by legislation, and, within this context, it has set out [how it regulates](#) with a focus on the following areas:

- To decide which bodies are charities
- To encourage and monitor charity compliance
- To identify and deal with misconduct
- To oversee changes to charities
- To provide guidance and support to charities
- To work with others

These focuses are underpinned by their [five regulatory priorities](#) for 2024-2026:

Priority	Why do we think we should focus on this?	Link to Corporate Strategy Priorities	What will we do about this over the next 3 years?	Benefits
1. Charities that fail to engage with the regulator and demonstrate to the public how they make a difference	<p>Around 10-12% of charities on the Register are failing to meet their legal duty to file annual accounts and engage with OSCR and are therefore failing to provide key information to the public about what they do and how they spend their money.</p> <p>Data from our Defaulting Charities and Revitalising Trusts projects indicates significant numbers of these charities are undertaking little or no activity.</p> <p>Experience from previous casework.</p>	<p>We will ensure the public have access to the information they need about charities in Scotland and how they are regulated.</p> <p>We will provide charities with the tools and guidance they need to meet regulatory obligations.</p> <p>We will deliver smart, responsive, and effective regulation that positively impacts on Scotland's charity sector and its beneficiaries.</p>	<p>Better targeting of proactive casework and accounts monitoring.</p> <p>Greater targeting of our communications with charities, for instance with newly registered charities and around the Annual Return.</p> <p>Engage with charities that fail to file accounts through our Defaulting Charities project.</p> <p>Work jointly with Foundation Scotland through the Revitalising Trusts project to help unlock charitable funds held in inactive charities.</p> <p>Plan for full use of the new powers contained in the Bill. Work with</p>	<p>Increase in proportion of charities on the Register that are actively providing benefit and reporting transparently to the public.</p> <p>Maintain public confidence in charities and OSCR.</p> <p>Reduction in OSCR resources required to pursue non-compliant charities.</p>

umbrella bodies, funders, and other stakeholders to re-engage with relevant charities.

Make changes to risk assessment of incoming intelligence.

<p>2. Misuse of Scottish charities for private gain</p>	<p>Our Public and Charity surveys found that confidence and transparency about how charities use their assets is a key driver of public trust.</p> <p>Referrals from other agencies, regulators and funders indicate misuse of assets is a key concern for them when it happens, though that is not necessarily often.</p>	<p>We will deliver smart, responsive, and effective regulation that positively impacts on Scotland’s charity sector and its beneficiaries.</p> <p>We will maintain a focus on best value, continuous improvement, and collaboration.</p>	<p>Make changes to risk assessment of incoming intelligence.</p> <p>Take early and decisive action to protect charitable assets and beneficiaries.</p> <p>External communication around inquiry reports and ‘lessons learned’ to support good governance.</p> <p>Use intelligence from the trustee database to be implemented under the new Charities Bill.</p> <p>Work with funders and other stakeholders to</p>	<p>Increased public confidence that donations and funding are being used appropriately.</p> <p>Wider stakeholder visibility of OSCR enforcement activity.</p>
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				identify what else would drive confidence.	
				Invest in relationships with other regulators to maximise access to useful intelligence.	
<p>3. Charity trustees' understanding of core governance matters and activities can be flawed and incomplete in areas such as:</p> <ul style="list-style-type: none"> • Trustee disqualification • Governing documents • Trustee quorum • Narrative reporting and accounts 	<p>Risk assessment of incoming intelligence indicates the majority of relevant complaints about charities from the public received by OSCR originate in trustee misunderstanding of their duties or their governing documents.</p> <p>Evidence to Parliament during the progress of the Bill indicated some key misunderstanding in the sector around criteria for disqualification of trustees.</p> <p>Responses to existing annual return questions from charities indicate that there is a lack of understanding of</p>	<p>We will provide charities with the tools and guidance they need to meet regulatory obligations.</p> <p>We will deliver smart, responsive, and effective regulation that positively impacts on Scotland's charity sector and its beneficiaries.</p> <p>We will maintain a focus on best value, continuous improvement, and collaboration.</p>	<p>Develop a new Annual Return regime with a sector improvement focus to support better understanding of governance matters and provide guidance on where trustees need to focus in their charity.</p> <p>Analyse queries received and better focus our guidance based on demand and need.</p> <p>Communicate to all stakeholders about changes to disqualification criteria under the Charities Bill.</p> <p>Work in partnership with sector bodies to maximise our</p>	<p>Charity trustees are fully informed about their duties and confident in the governance of their charities, minimising disputes, and compliance failures.</p> <p>There is better understanding of who can and cannot be a charity trustee.</p> <p>OSCR positively contributing to the sector in the most effective and efficient way.</p>	

governance matters amongst some trustees.

understanding of issues and support their work with specific charity groups

Numbers of queries about governance received from charities and other stakeholders.

Random monitoring of incoming accounts indicates substantive issues around understanding of trustee quorums.

<p>4. Poor relationships and conflict within charities and between charities and communities</p>	<p>Risk assessment of incoming intelligence indicates a substantial proportion of complaints from the public about charities relate to disagreement with decisions made by charity trustees or a breakdown of trust with a charity.</p> <p>Substantial numbers of concerns about charities come from members, staff, or trustees, reflecting disagreement or</p>	<p>We will ensure the public have access to the information they need about charities in Scotland and how they are regulated.</p> <p>We will provide charities with the tools and guidance they need to meet regulatory obligations.</p>	<p>Make changes to risk assessment and prioritisation of activity resulting from incoming intelligence.</p> <p>Maximise benefits from new powers under the Bill, such as positive direction and appointing interim trustees.</p> <p>Work through umbrella bodies, funders, and other stakeholders to help guide charity trustees through issues.</p>	<p>Charities are able to maximise the benefit they provide to the communities they serve.</p> <p>The public have confidence that charities are well run and responsive to public needs.</p> <p>Charity trustees are confident in running their charities and it is easier to retain good trustees and recruit new trustees. OSCR is</p>
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	<p>breakdown of trust within charities.</p> <p>Concerns received from stakeholders including funders, MSPs and charity beneficiaries.</p> <p>Evidence of issues from local and national media reporting.</p>	<p>We will deliver smart, responsive, and effective regulation that positively impacts on Scotland’s charity sector and its beneficiaries.</p>	<p>Build new relationships with community bodies to support mutual understanding of issues and regulation.</p> <p>Develop new guidance materials to support charity trustees to manage internal and external relationships more effectively.</p> <p>Produce targeted communications with selected subsectors and stakeholders.</p>	<p>drawn into fewer disputes where regulatory impact is difficult to achieve, or it has no clear remit.</p> <p>There are fewer situations where poor relationships impact on communities and individuals.</p> <p>OSCR contributes to the National Performance Framework outcome for inclusive, empowered, resilient and safe communities.</p>
<p>5. Charities’ management of their reserves may not be sufficiently active to make best use of their resources and may be constrained by mistaken perceptions of ‘OSCR requirements’</p>	<p>Findings of the recent IVAR report on charity reserves.</p> <p>Randomised monitoring of charity accounts indicates that there are still a number of charities who do not prepare a Trustees’ Annual Report and therefore do not explain their policy on reserves.</p>	<p>We will provide charities with the tools and guidance they need to meet regulatory obligations.</p> <p>We will maintain a focus on best value, continuous</p>	<p>Work with professional bodies and intermediaries. Enhance OSCR guidance on reserves.</p> <p>Target communication on reserves policy towards key subsectors.</p> <p>Target our monitoring of charity accounts to identify reserves issues.</p>	<p>Charities’ management of their reserves maximises sector resilience in face of cost of living and future challenges.</p> <p>OSCR contributes to helping the charity sector deal with financial challenges.</p>

improvement, and
collaboration.

Develop a new Annual
Return regime with a
focus on helping
trustees to run their
charity better and
actively consider how
funds are being used.

Source: [Regulatory Priorities 2024-26](#)

Members may wish to ask:

1. OSCR has five priorities in its 2023-26 Corporate Strategy, five different priorities in its Regulatory Priorities 2024-26 and six focuses listed online in the 'How we regulate' section of the website. Can you explain the purpose of the various different lists of priorities and how they interact?
2. How will the work needed to implement the 2023 Charities Act impact on usual business and resources of OSCR?
3. OSCR has set out five regulatory priorities for 2024-2026. How were these determined and what progress has been made in relation to these priorities since their introduction?

Theme 2: Funding and financial performance

OSCR has a budget allocated for its administration and operational costs. This budget is designated entirely for operating expenses, with no allocations for capital expenditures or other types of adjustments. The [2024-25 budget](#) has been set at £3.639m which is a 10.3% increase on their 2023-24 budget. [In real terms, this is an 8.5% increase.](#)

For the financial year 2023-24, OSCR's total budget was £3.3 million. OSCR's budget over the previous years is as follows:

Year	2021-22	2022-23	2023-24	2024-25
OSCR Budget line (m)	£3.580	£3.430	£3.300	£3.639

In OSCR's [2022-23 Annual Report](#) it stated that OSCR's revenue resource expenditure for the year ended 31 March 2023 was £3.390m, compared to a revenue budget of £3.430m. The main operating costs were related to staff (£2.443m) and other expenditures (£0.818m), with depreciation at £0.128m.

It also detailed that OSCR paid 98.8% of invoices within the terms set by Scottish Government Policy, an improvement from 93.7% in the previous year.

Members may wish to ask:

4. OSCR's 2024-25 budget has been set at £3.639m which is a 10.3% increase on their 2023-24 budget. How does OSCR intend to use the additional allocation?
5. The budget increase reverses a trend of declining budgets, can you provide the rationale for the increase in budget for the current year and explain how this was agreed with the Scottish Government?

Theme 3: Staffing

The Office of the Scottish Charity Regulator (OSCR) is [structured](#) to ensure effective regulation and support for Scottish charities. The strategic direction of OSCR is set by a Board, whose members are appointed by Scottish Ministers through an open public appointments process.

This Board is supported by around 50 staff members based in Dundee. Corporate decision-making responsibilities are delegated to Maureen Mallon, the Chief Executive and Accountable Officer. It is worth noting that the current CEO is [set to retire](#) at the end of June 2024. Katriona Carmichael has been [announced](#) as the successor and will take over on July 1st, 2024.

The Senior Management Team, consisting of the Chief Executive and two Heads of Service, provides both strategic and operational leadership to the staff. OSCR staff are organised into two main teams: the Corporate Team and the Regulation & Improvement Team. You can view the [organisational chart here](#).

OSCR's [Corporate Strategy 2023-26](#) outlines its operating priorities, targets, and outputs for the specified period, and the Annual Corporate Governance Review highlights their governance practices and achievements.

The Scottish Ministers hold the ultimate responsibility for charity law and Third Sector policy, and OSCR collaborates closely with the Scottish Government's Charity Law Team to ensure alignment and effective regulatory practices.

Each year OSCR publishes an annual report. The most recent was published 26 June 2023 and is for the year [2022-23](#). Below is an overview of their performance and the key themes that emerged during the year.

Staffing Levels:

OSCR maintained a permanent staff headcount of 44, with 8 part-time staff members, resulting in a Whole Time Equivalent (WTE) of 42.1. This is in between the previous two years. In [2020-21](#) the overall WTE for permanent staff 45.35 with a permanent staff headcount of 48 with 10 part-time staff members. At the end of [2021-22](#) the overall WTE for permanent staff was 40.06.

Staff Engagement:

Recognising the importance of an engaged workforce, OSCR states that it prioritised staff engagement, which was reflected in the highest engagement scores in years, as per the Cabinet Office annual survey.

OSCR states that the hybrid working model, introduced post-pandemic, was fully embedded, with staff spending at least two days a week in the office. According to OSCR, this model facilitated better collaborative working and was supported by improved technologies for remote work.

Staff Development:

OSCR launched a People Strategy in July 2022, detailing its plans to support for staff to thrive and develop new skills, enabling them to work flexibly across the organisation.

An updated induction program for new staff and the launch of a staff intranet in March 2023 further supported staff development and communication.

Members may wish to ask:

- 6. The Scottish Ministers are ultimately responsible for charity law and Third Sector policy, with OSCR working closely with the Scottish Government's Charity Law Team to ensure effective regulation. How does this collaboration function in practice, how frequently does OSCR engage with the Scottish Government, and is this level of collaboration deemed effective?**
- 7. OSCR launched a People Strategy in July 2022, detailing its plans to support for staff to thrive and develop new skills, enabling them to work flexibly across the organisation. What specific actions does this involve and how is the implementation of the strategy progressing?**

Theme 4: Performance 2023-24

Each year OSCR publishes an annual report. The most recent was published 26 June 2023 and is for the year [2022-23](#). Below is an overview of their performance and the key themes that emerged during the year.

Regulatory and administrative

Regulatory Efficiency:

OSCR met the 21-day timescale for considering applications for consent from charities in 96.2% of cases. This is a decrease from 97% 2021-22 and at a similar level to 2020-21 at 96%. Consent is the process of seeking prior approval from OSCR for certain changes as outlined in the Charities and Trustee Investment (Scotland) Act 2005.

The number of decisions made on consents increased to 795, up from 715 in 2021-22 and 677 in 2020-21.

Public Concerns and Whistleblowing:

Public concerns about charities rose to 638, with 228 cases deemed appropriate for OSCR to address, a significant increase from the previous year.

OSCR received eight whistleblowing reports, up from three in the previous year. These reports helped identify regulatory concerns, protect charity assets and beneficiaries, and address risks within the charity sector.

Digital transformation

OSCR Online:

A key milestone in OSCR's Digital Strategy was the launch of the new charity reporting system, OSCR Online, in July 2022. According to OSCR, this system has already shown improvements in operational and process efficiencies.

Automation and Process Review:

OSCR identified efficiencies through increased automation and process reviews, despite challenges in resource planning due to Public Sector Pay Policy negotiations. These efforts aimed to free up resources for further digital transformation projects.

SORP Development

Charities Statement of Recommended Practice:

OSCR and other UK charity regulators are part of the body which creates the Charities Statement of Recommended Practice (SORP). The Annual Report 2022-23 states they were "heavily involved" in the drafting of the next Charities SORP. The revised SORP aims to better meet the needs of those preparing and using charity accounts, supporting accountability and transparency.

Legislative Support

Charities (Regulation and Administration) (Scotland) Bill:

OSCR collaborated with the Scottish Government on the Charities (Regulation and Administration) (Scotland) Bill, incorporating recommendations from previous annual reports. This legislative support aims to enhance charity regulation and administration.

Corporate Strategy and Governance

Corporate Strategy 2023-26:

The new Corporate Strategy for 2023-26 was launched, reflecting the involvement of the new Chair and five new Board Members appointed in 2022. This strategy outlines OSCR's vision and objectives for the coming years.

Governance and Performance Information:

OSCR reviewed and revised performance information to better align with business and corporate goals. This included the publication of performance information and regulatory frameworks to increase transparency.

Performance Report 2023-24

Each year OSCR publishes a report detailing their performance against the five priorities laid out in their [Corporate Strategy 2023-26](#). The most recent report [2023-24 Performance Report](#) details the following:

Priority 1: We will ensure the public have access to the information they need about charities in Scotland and how they are regulated.

1. Annual Return and Accounts: The goal was to have less than 11% of charities not up to date with their filings. They achieved 10.1%, meeting the goal.
2. Website Visitors: The target was a 5% increase in visitors accessing information about charities. The data for this metric is to be confirmed (TBC).
3. Helpfulness Rating: The goal was a 90% helpfulness rating for information about charities. This metric is also TBC.
4. Public Feedback: The target was that 80% of the public would report finding the information they need on the OSCR website. They achieved 82%, meeting the goal.
5. Publications on Inquiries: The goal was to increase the volume of publications on inquiries and lessons learned from the 2022-23 baseline of 11. They achieved 10, **not meeting the goal.**

Priority 2: We will provide charities with the tools and guidance they need to meet regulatory obligations

6. Views and Downloads: The goal was a 5% increase in views and downloads of guidance and tools. This metric is TBC.
7. Helpfulness Rating: The target was a 90% helpfulness rating for tools and guidance. They achieved 71%, **not meeting the goal.**
8. Calls About OSCR Online Services: The goal was a 20% reduction in calls. They achieved a reduction from 2357 to 1363, meeting the goal.
9. Freedom of Information Requests: The target was a 50% decrease in requests for information already published. They achieved a reduction from 12 to 5, meeting the goal.

Priority 3: We will deliver smart, responsive, and effective regulation that positively impacts on Scotland's charity sector and its beneficiaries

10. Status Cases: The goal was to complete 90% of status cases within 6 months. They achieved 97%, meeting the goal.

11. Concerns Cases: The target was to complete 60% of concerns cases within 6 months. They achieved 50%, **not meeting the goal.**
12. Consent Applications: The goal was to complete 100% of consent applications within 28 days. They achieved 100%, meeting the goal.
13. Inappropriate Concerns: The target was to reduce the proportion of inappropriate concerns by 50%. They achieved a reduction to 59%, **not meeting the goal.**

Priority 4: We will focus on our people and have a motivated, flexible, and well supports workforce.

14. Engagement Score: The goal was a 60% engagement score in the People Survey. They achieved 65%, meeting the goal.
15. Stress Index: The target was to reduce the stress index to 32%. They achieved 27%, meeting the goal.
16. Perma Index: The goal was a 72% Perma Index score. They achieved 71%, **not meeting the goal.**
17. L&D Theme Score: The target was a 50% score for the Learning and Development theme. They achieved 51%, meeting the goal.
18. Long-Term Absence: The goal was to keep average working days lost to long-term absence under 7 days. They achieved 1.1 days, meeting the goal.
19. Short-Term Absence: The goal was to keep average working days lost to short-term absence under 7 days. They achieved 4.5 days, meeting the goal.

Priority 5: We will maintain a focus on best value, continuous improvement, and collaboration.

20. Business Plan Activities: The goal was to deliver all 2023-24 business plan activities on time. They completed the majority of the priorities, **partially meeting the goal.**
21. Efficiency Savings: The target was a 5% efficiency saving annually. They made a saving of £12k on a spend of £79k, achieving an efficiency of 15%, meeting the goal.
22. Memorandums of Understanding (MOUs) and Partnership Agreements: The goal was to review and refresh all MOUs and partnership agreements. They reviewed all but did not refresh them due to reprioritisation, **not meeting the goal.**

Members may wish to ask:

8. **In the 2023-24 performance report, there is not data available for two KPIs (website visitors and helpfulness rating). What progress in OSCR making in obtaining data for these measures?**

9. What is OSCR doing to address performance measures that are not being met? For example, for priority three, there was a target to complete 60% of concerns cases within 6 months however only 50% was achieved.
10. For Priority 5 in the 2023-24 performance report, the goal was to review and refresh all Memorandums of Understanding and partnership agreements was not met due to reprioritisation. Why was this goal reprioritised and what was prioritised above it?
11. A key milestone in OSCR's Digital Strategy was the launch of the new charity reporting system, OSCR Online, in July 2022. According to OSCR, this system has already shown improvements in operational and process efficiencies. How is OSCR Online delivering these improvements and efficiencies?
12. On page 13 in the 2022-23 Annual Report, it states that OSCR identified efficiencies through increased automation and process reviews, despite challenges in resource planning due to Public Sector Pay Policy negotiations. Can you provide more information on what these efficiencies were as well as the challenges that are referenced?
13. In the 2022-23 Annual Report, it states that OSCR and other UK charity regulators were “heavily involved” in the drafting of the next Charities SORP. Can you explain OSCR’s specific role?

Corporate documents

[Regulatory Priorities 2024-26](#)

[Corporate Strategy 2023-26](#)

[Business Plan 2024-25](#)

[Annual Report and Accounts 2022-23](#)

[Performance Report 2023-24](#)

[Annual Corporate Governance Review 2022-23](#)

Theme 5: Charities and Trustee Investment (Scotland) Act 2005 implementation

OSCR is the independent regulator and registrar for Scottish charities with its general functions laid out in Chapter 1 of the [Charities and Trustee Investment \(Scotland\) Act 2005](#):

(a) to determine whether bodies are charities,

- (b) to keep a public register of charities,
- (c) to encourage, facilitate and monitor compliance by charities with the provisions of this Act,
- (d) to identify and investigate apparent misconduct in the administration of charities and to take remedial or protective action in relation to such misconduct, and
- (e) to give information or advice, or to make proposals, to the Scottish Ministers on matters relating to OSCR's functions.

The [Charities \(Regulation and Administration\) \(Scotland\) Act 2023](#) introduced several new requirements and changes for OSCR. These changes include:

Key Changes Effective from April 1, 2024

- **Increased Inquiry Powers:**
 - **Direct Actions:** OSCR can now direct charities to take specific actions, beyond just instructing what not to do.
 - **Interim Trustees:** OSCR can appoint interim trustees to assist charities lacking sufficient trustees.
 - **Inquiries into Former Entities:** OSCR's inquiry powers now cover former charities and trustees.
- **Non-Compliant Charities:**
 - **Removal for Non-Submission of Accounts:** Charities failing to submit accounts and engage with OSCR can be removed from the register.
- **Connection to Scotland:**
 - **Registration Refusal:** Charities must have a significant connection to Scotland, such as a principal office or activities in the region, for registration.

Simplifications and Flexibility Enhancements

- **Notice of Changes:** Charities no longer need to give 42 days' notice for changes requiring OSCR's consent (e.g., name changes).
- **Charity Mergers:** OSCR can register two merging charities under the same name.

Future Measures (Effective October 1, 2024, and Summer 2025)

- **Public Record of Disqualified Trustees:** A publicly searchable record of disqualified trustees will be created.
- **Publication of Charity Accounts:** OSCR will publish accounts for all charities, not just those with higher incomes or specific structures.

- **Disqualification Criteria:** Expanded to include more offences and senior management positions.
- **Record of Charity Mergers:** OSCR will maintain a record of charity mergers.

The Charities (Regulation and Administration) (Scotland) Act 2023 aims to strengthen the regulatory framework, enhance accountability and transparency of charities, and ensure that the Scottish charity sector operates effectively and in the public interest.

More detail on the Charities (Regulation and Administration) (Scotland) Act 2023 and the evidence behind it, including the Committee's work can be found in Appendix 1.

Members may wish to ask:

- 14. A number of changes resulting from the Charities (Regulation and Administration) (Scotland) Act 2023 will come into effect on October 1st, 2024, and in summer 2025, such as the power to direct charities to take specific actions, the power to appoint interim trustees and the requirement to create a publicly searchable record of disqualified trustees. What is OSCR doing to prepare for these new powers and requirements?**
- 15. The 2023 Charities Act introduced specific requirements relating to OSCR's communication with charities, ensuring that the regulatory body maintains clear and effective communication channels with the organisations it oversees. What OSCR is doing in regard to these?**
- 16. Has OSCR taken any action in respect to the new powers set out in the 2023 Charities Act so far, and if not, are there any plans or expectations of action to be taken, or how is OSCR preparing for potential action in these areas?**

Kelly Eagle, Senior Researcher, SPICe Research

6 June 2024

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The Scottish Parliament, Edinburgh, EH99 1SP www.parliament.scot

Appendix 1: Background on the Charities (Regulation and Administration) (Scotland) Act 2023

The [Charities \(Regulation and Administration\)\(Scotland\) Bill](#) was introduced in the Scottish Parliament on 15 November 2022 by the Cabinet Secretary for Social Justice, Housing, and Local Government, Shona Robison MSP. [A SPICe briefing](#) lays out the following aims of the Bill.

“To strengthen and update the current legislative framework for charities by:

- increasing transparency and accountability in charities
- making improvements to OSCR’s powers
- bringing Scottish charity legislation up to date with certain key aspects of charity regulation in England, Wales, and Northern Ireland.

If passed, the Bill would:

- require OSCR to publish names of trustees on the public Scottish Charity Register
- require OSCR to maintain an internal database of trustee contact details
- update the range of offences and situations that result in disqualification of charity trustees
- extend the criteria for disqualification to apply to senior management positions as well as trustees
- require OSCR to create a searchable record of charity trustees who have been barred by the courts from acting as trustees
- allow OSCR to appoint interim trustees in specific circumstances
- require OSCR to publish annual accounts for all charities on the Register
- allow OSCR to remove charities from the Register if they fail to submit accounts and fails to respond to subsequent communication from OSCR
- require OSCR to keep a record of charity mergers to assist with the transfer of legacies
- allow OSCR to undertake inquiries into former charities and their trustees
- enable OSCR to issue positive directions to charities following inquiry work
- require charities to demonstrate a connection to Scotland if they are to be registered by OSCR.

Where charities or trustees have concerns regarding the publication of names or other details, the Bill provides a mechanism for them to request that information is withheld. OSCR will consider such requests and, if refused, there are channels for review of these decisions.

In addition to the above, the Bill includes a range of minor and technical amendments to existing legislation.

In total, the Bill's provisions are expected to cost between £0.6 million and £1 million across the first three years following implementation. Costs are expected to fall on the Scottish Administration (which includes OSCR), with no anticipated costs for local authorities.

The Scottish Government does not estimate that the Bill would require significant additional activity on the part of individual charities, so has not included any costs for these bodies in the Bill documents. However, it should be noted that even very minor additional costs could have an impact on smaller charities. Also, with over 25,000 charities in Scotland, even minor additional costs for each of these charities would imply a significant additional cost across the sector.”

Call for evidence

The Social Justice and Social Security Committee issued a [written call for evidence](#) on the Bill which ran from 8 December 2022 to 3 February 2023. Responses were collected from both organisations and individuals on questions surrounding the Bill. Responses demonstrated various perspectives on the Charities Bill and its impact on the Office of the Scottish Charity Regulator (OSCR). Key points include:

- 1. General Support for Transparency and Regulation:** There is broad support for the Bill's aim to enhance transparency and strengthen OSCR's regulatory powers, particularly through maintaining a register of trustees and charitable accounts.
- 2. Alignment with UK Standards:** While the Bill brings Scotland closer to the regulatory standards in England and Wales, some areas still need improvement. For instance, the Bill does not cover lifetime gifts, unlike the model in England and Wales.
- 3. Concerns about Implementation and Costs:** Many respondents, including CHAS, Alzheimer Scotland, and Zero Tolerance, expressed concerns about the potential administrative and financial burdens on charities. They emphasised the need for detailed guidance from OSCR and adequate funding to ensure effective implementation without disproportionate costs to charities.
- 4. Disqualification and Enforcement Provisions:** Sections 4-7 of the Bill, which update criteria for the automatic disqualification of charity trustees and extend it to senior management, received mixed reactions. Some called for further clarification to avoid unnecessary costs related to recruitment and pre-employment checks.
- 5. Trustee Anonymity and Safety:** Concerns were raised about the public register of trustees, particularly regarding the safety of individuals such as survivors of domestic abuse or trafficking. There were calls for a clear and consistent exemption process to protect vulnerable individuals.
- 6. Data Privacy:** Alzheimer Scotland and others sought clarification on the use and scope of data collected by OSCR, emphasising the need for clear provisions on data privacy and access.
- 7. Funding for OSCR:** There was a consensus that OSCR must be properly funded to carry out its enhanced regulatory duties effectively. Some respondents supported an increase in funding to ensure OSCR can manage its new powers without creating additional burdens for charities.

8. **Impact on Charity Operations:** Views were mixed on whether the Bill would make it easier or more difficult to start and run a charity. While some believed it would bring clarity to charity regulation, others were concerned about the potential complexities and administrative demands.

In [their response](#) to the call for evidence, OSCR expressed strong support for the measures in the Charities Bill, which aim to enhance transparency, protect charitable assets, and align Scottish charity regulation with other UK jurisdictions. OSCR highlights the need for the Bill to include powers for issuing positive directions to charity trustees, which would enable more effective intervention in cases of non-compliance and better governance. The Bill is seen as a step towards improving public trust in charities by making information about them more accessible and ensuring consistent regulatory standards across the UK.

Overall, while the Bill was seen as a positive step towards improving charity regulation in Scotland, there were significant concerns about its implementation, costs, and the need for clear guidance and adequate funding for OSCR.

Evidence Session with OSCR – 9 March 2023

An evidence session was held by the Committee with OSCR on 9 March 2023 regarding the Charities (Regulation and Administration) (Scotland) Bill. OSCR strongly supports the Bill, which aims to enhance transparency, protect charitable assets, and bring Scottish charity regulation in line with other UK jurisdictions.

Key Points from OSCR:

1. **Positive Directions:** The Bill introduces powers for OSCR to issue positive directions to charity trustees. This would enable OSCR to direct trustees to take specific actions to remedy non-compliance or protect charitable assets, such as managing conflicts of interest. This power is seen as crucial for effective intervention and governance.
2. **Transparency and Public Trust:** The Bill aims to improve transparency by making information about charities more accessible. This includes allowing the public to see who oversees individual charities, hosting annual reports online, and enabling OSCR to hold inquiries into organisations falsely representing themselves as charities.
3. **Consistency Across UK Jurisdictions:** The Bill seeks to ensure that Scotland's regulatory environment is consistent with other parts of the UK. This is important to prevent "regulator-shopping," where charities might seek to operate in jurisdictions with less stringent regulations.
4. **Consultation Process:** OSCR appreciates the thorough consultation process undertaken by the Scottish Government, which included input from various stakeholders. The process was seen as clear, precise, and comprehensive.
5. **Impact on Smaller Charities:** While the Bill introduces some additional administrative burdens, OSCR believes these are minimal and essential for

maintaining transparency and public trust. OSCR commits to working with key stakeholders to minimise the impact on smaller charities.

6. **Review of Charity Law:** OSCR supports the idea of periodically reviewing charity regulations to ensure they remain relevant and effective. Given the changes in the charity sector since 2005, a review of Scottish legislation is seen as timely.
7. **Financial Memorandum:** The Financial Memorandum accompanying the Bill was created with extensive input from OSCR, using industry-standard methodologies and Scottish Government guidance. OSCR believes it accurately represents the future costs related to the Bill's implementation and operation.
8. **Proportionality and Appropriateness:** OSCR and other stakeholders believe the measures in the Bill are proportionate and appropriate. The Bill builds on the 2005 Act, which introduced proactive Scottish charity law, and aims to enhance the regulatory framework based on years of regulatory experience.

To summarise, OSCR views the Charities (Regulation and Administration) (Scotland) Bill as a necessary and timely update to the regulatory framework, designed to enhance transparency, protect charitable assets, and ensure consistency with other UK jurisdictions. The organisation is keen to see the Bill implemented promptly to maximise public benefit and address current regulatory gaps.

Stage 1

The Committee's [Stage 1 Report on the Charities \(Regulation and Administration\) \(Scotland\) Bill](#) published on 28 April 2023 provided a number of recommendations for OSCR:

1. **Engagement and Consultation:** The Scottish Government should learn from past consultation processes, especially those interrupted by COVID-19, and ensure future reviews of charity law engage a wider range of stakeholders, particularly small to medium organisations. Early and direct engagement with the third sector is crucial.
2. **Communication and Clarity:** OSCR (Office of the Scottish Charity Regulator) should lead a comprehensive communication strategy to clarify changes, especially around undischarged bankruptcy as a disqualification criterion. The burden of this communication should not fall on the third sector.
3. **Implementation and Support:** The Scottish Government should outline its plans for the commencement of the Bill before any Stage 2 consideration. OSCR should support charities facing difficulties in meeting new financial reporting obligations.
4. **Trustee Recruitment:** OSCR should provide more information on recruiting interim trustees and consider a Scotland-wide panel of trustees. The Scottish Government should review the need for a dispute mechanism for interim trustee appointments.

5. **Transparency and Accountability:** The Committee supports provisions to improve transparency and accountability, including extending disqualification criteria to senior management and creating a publicly searchable record of disqualified trustees. OSCR should ensure processes are in place to avoid mistaken identity.
6. **Lifetime Gifts and Merger Provisions:** The Scottish Government should analyse the benefits and disadvantages of addressing lifetime gifts within the merger provisions of the Bill.
7. **Religious Charities:** The Scottish Government should include exemptions for designated religious charities in a wider review.
8. **Data Handling and Safeguarding:** OSCR should have safeguarding measures in place given the changes the Bill will introduce.
9. **Diversity and Lived Experience:** The waiver process for trustees and senior managers should be straightforward and well understood, recognising the value of lived experience.
10. **Alignment with UK Standards:** Aligning disqualification criteria with the rest of the UK is sensible for due diligence and public confidence.

In the report, the Committee supports these recommendations and emphasises the need for OSCR to work closely with the charity sector to address any concerns and ensure smooth implementation of the Bill's provisions.

Stage 3

During [Stage 3](#) of the legislative process for the Charities (Regulation and Administration) (Scotland) Bill, several amendments were added to the Bill's provisions in line with the following themes:

Review and Appeal Process: An amendment was made to include a review and appeal process for disputes related to OSCR's ability to appoint interim trustees. This ensures that there is a fair mechanism for addressing any concerns or disputes that arise from OSCR's decisions.

Income from Endowments: Amendments 7 and 8 were introduced to ensure that income derived from an endowment is treated as part of the capital sum. This allows such income to be included in a reorganisation scheme proposed by a charity under the new provisions. Without these changes, charities might have had to apply for a second reorganisation scheme or spend the income prematurely.

Clarification of Charity Constitution: Amendment 12 was introduced to clarify that references in the 2005 Act to a charity's constitution mean the constitution as varied. This amendment ensures that there is no ambiguity and reflects the intended practice under the 2005 Act.

Technical and Minor Amendments: The bill also included a list of minor or technical amendments to enhance the existing framework. These amendments were added following engagement with OSCR and the Law Society of Scotland.

Communication with Charities: Group 4 amendments focused on OSCR's communication with charities, ensuring that the regulatory body maintains clear and effective communication channels with the organisations it oversees.

These amendments were aimed at refining the bill to ensure it effectively enhances transparency, accountability, and regulatory compliance within the charity sector in Scotland.

The Bill was passed on 28 June 2023 and became an Act on 09 August 2023.