

## DRAFT CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) BILL

CVS Perth & Kinross is delighted that, at last, a Charities Bill is about to begin its journey through the Scottish Parliament. It is now over three years since the McFadden Report and recent unwelcome scandals have shown the urgent need for reform.

We are very pleased by the clearer definition of charitable purposes contained in the draft legislation, as we feel that the current fourth and last “head” – ‘other purposes beneficial to the community’ – is far too vague. We also welcome the inclusion of important standards in a modern civilised society such as health, human rights, environmental protection, care, community development, civic responsibility and animal welfare within those charitable purposes.

We think that the correct decision has been made by those who have written the Bill in not defining “public benefit” but in requiring the Office of the Scottish Charity Regulator to issue guidance on how it will interpret the term. Case law and, if necessary, the Scottish Courts will define the term increasingly closely as time passes. Every charity performs a different function and ‘broad brush’ legal definitions are unlikely to be suited to such a diverse sector.

CVS Perth & Kinross are pleased that you have felt it necessary to spell out more clearly than at present the duties and responsibilities of those involved in running charities and of those involved in fundraising for them. We are particularly delighted by the proposal to force professional fundraisers and “commercial participators” to make a statement to potential donors about the level of donated funds which they will receive and the amount which will go directly to the charity. We also fully support the SCVO viewpoint that there should be no staff representation on charities’ Boards.

We do, however, have some concerns. First of all, with the Scottish bill going through the Scottish Parliament at virtually the same time as the English and Welsh bill is being passed at Westminster, we are unclear about the complete compatibility of the two bills. It seems that charities operating throughout the United Kingdom will have to register twice, with both the Charities Commission and the OSCR; moreover, it is not clear at all in the draft Scottish bill whether existing charities will need to re-apply for charitable status or will automatically retain that status. On this latter point, we should welcome a “new broom sweeps clean” approach whereby existing charities all had to re-apply: this is an ideal opportunity to re-assess existing charities’ fitness for charitable status, its kudos and its tax advantages. Will independent schools, NHS Trusts and Non-Departmental Public Bodies, for example, continue to benefit from charitable status?

Secondly, there is no mention in the draft bill of any support, financial or other, which may be available to charities to comply with the new regulations when they become law: for example, supplying information to OSCR and the public, improving governance, conforming to new accounting standards or changing the legal status of the organisation to a Scottish Charitable Incorporated Organisation. The voluntary

and charitable sectors are hardly awash with cash: such issues are real worries for us and for our member organisations.

Our third concern is the legal status of the new type of body known as a Scottish Charitable Incorporated Organisation (SCIO). It will be incorporated and so will be a legal entity, and its "stewards" will have limited liability; but it will not be a Company Limited by Guarantee. How "limited" will the stewards' liability be? As low as £1 as in most Companies Limited by Guarantee? We should like more details on this part of the bill.

Fourthly, we have questions about the legal status of the Office of the Scottish Charity Regulator. It is a non-Ministerial Department. Will it therefore be protected from undue political interference? Will it be independent, and will its activities be transparent? How will its non-executive Board be chosen and how will it operate?

Finally, while we welcome (as stated above) the new list of 13 charitable purposes in the draft bill, we still have questions about where some of our organisations might fit into those categories. Community transport, for example, seems to be an important element in the Scottish Executive's plans to close the opportunity gap, but there is no mention of access rights (unless these are covered within "human rights" or "care"): would a community transport operator apply under "the advancement of health", "the prevention or relief of poverty", "the advancement of civic responsibility or community development", "the provision of care to the aged, people with a disability, young people or children" or simply "any other purpose intended to provide community benefit".