

## **Consultation on the Draft Charities and Trustee Investments (Scotland) Bill**

Response by the Asset Management Committee on behalf of Dumfries and Galloway Council: 17 August 2004.

### **Summary of Questions Posed by the Scottish Minister.**

#### **1 Should the initial interpretation of “public benefit” be left to the regulator, or should broad criteria be provided in the Bill?**

The Council supports the proposal for the new “two stage” test for organisations seeking to become charities and in particular the requirement that the charity must show that they provide public benefit. Broad criteria should not be provided within the legislation as this would unreasonably fetter the discretion of the regulator and the Courts. Instead OSCR should publish guidance setting out how it will interpret public benefit and for deciding whether an organisation meets the charity test. The proposed criteria referred to in the consultation paper might form part of that guidance.

#### **2 What are your views of the appropriateness of OSCR’s form, appointments and functions as set out in the Consultation document and in the draft bill?**

The Council agrees that the OSCR should be a non-ministerial department. It noted that this is the format of the Charities Commission for England and Wales. Whilst accountable to Parliament for its actions, its independence would be strengthened by not being subject to the direction or control of Scottish Ministers. The Council would welcome open and transparent appointment procedures. Monitoring procedures should be put in place to ensure that OSCR remains independent both of the government and the charities sector and are accountable including to the public and stakeholders.

#### **3 What are your views on the suggested term “charity steward”?**

The term “charity trustee” would be preferred. Given that the word “trustee” is preceded by “charity”, this should avoid conflict with the existing use of the title “trustee” in trust law. It is suggested that for many members of the public the term “steward” has other connotations including association with “door stewards” or “bouncers”.

#### **4 What are views on the proposed duties of “Charity Stewards”?**

Whilst the duties already exist in Common Law, the Council believes that it would be of benefit for them to be codified as proposed. No additional duties are suggested.