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Richard Arnott
Head of Charity Law Team
Scottish Executive Voluntary Issues Unit
Area 2-G, Victoria Quay
Edinburgh EH6 6QQ

Dear Mr Arnott,

Comments on Draft Charities and Trustee Investment (Scotland) Bill

This is not a detailed response to the Scottish Executive consultation process on the draft Charities and Trustee Investment (Scotland) Bill, but rather a suggestion for an amendment which would further the aims of the bill in terms of the availability of information about charities, and also enhance the provisions regarding freedom of information in Scotland.

The current position in terms of the Freedom of Information (Scotland) Act 2002¹ ('the Act') is that although charities are acknowledged as bodies that are capable of 'exercising functions of a public nature', in order for them to be brought within the ambit of the freedom of information regime, they require to be formally designated by order by the Scottish Ministers, on an individual basis.²

Thus, a member of the public might wish to have access to information held by a charity in relation to function it is exercising that is of a public nature and that is publicly-funded (for example, a Supporting People initiative), and which would otherwise be information of the type covered in the Act, but, in order to compel the release of that information, would have to seek the designation of the charity in question by the Scottish Ministers. The information required might well be information that a Local Authority would have to make available were it to be exercising the function in question,

¹ Freedom of Information (Scotland) Act 2002 (asp 13)

² Ibid, s5

and, indeed, the specific functions in question may well be functions that may be undertaken 'in house' by one authority yet contracted out in another.

The process of individual designation by the Scottish Ministers by order is a reactive rather than a proactive strategy in terms of freedom of information. I do not know if the power had been used to date, but I would imagine that it might be slow and cumbersome.

The solution to this situation would surely be to introduce an amendment to draft Charities and Trustee Investment (Scotland) Bill at Chapter 3 that would have the effect of automatically designating, without consultation, all charities that are in receipt of public funding for carrying out public functions. This would be consistent with the aims of both the bill and Freedom of Information (Scotland) Act 2002.

I would submit that there would be no additional costs to charities in doing so as (i) the provisions in the Freedom of Information (Scotland) Act 2002 are intended to be self-financing, and (ii) charities will already have had to review their policies and procedures in order to secure compliance with the Data Protection Act 1998.³ There would possibly be a cost saving for the Executive inasmuch as automatic designation is likely to cost less than designation by order by the Scottish Ministers on an individual charity basis.

Other than this, I have read the draft Charities Bill and associated consultation paper, and am in agreement with their general intentions and provisions. I would particularly support the provisions to regulate professional charity street collectors ('chuggers'), and the provision that Professional fundraisers and commercial participators will be required in regulations to make a statement to potential donors about the amount of the funds they will receive and commercial participators about the amount that will go to the charity or cause. I would hope that these regulations would be introduced promptly following the coming into force of the new Act.

Although I am commenting as an individual, I have worked in the charity sector for 18 years. I was employed by a Scottish housing charity from 1987-2003, and have worked as a volunteer with a local homelessness charity in Aberdeen since 2003. I have also actively supported and participated in street collections for other charities. I believe that the provisions in the bill will enhance the reputation of Scotland's charity sector, which has been badly affected by recent scandals, and tarnished through the activities of the professional street charity collectors.

Yours sincerely


Douglas Bain

³ Data Protection Act 1998 (Chapter 29)