

Alcohol Focus Scotland's response to

The Draft Charities and Investments (Scotland) Bill 2004

1. Introduction

AFS welcomes the proposed introduction of new legislation, which should assist in the general improvement in the standards of the governance and operations of organisations in the charitable sector.

2. Specific points

- (a) Definition of Public benefit – AFS is of the view that the definition of 'public benefit' should be left to the Office of the Scottish Charity Regulator (OSCR), rather than being defined in statute. This would allow for periodic review, and for some flexibility in the interpretation of the definition. However there does need to be a clearer definition of the populations considered to be in need, and which each charity claims to benefit.
- (b) Appointments to the OSCR – AFS would suggest that appointments to OSCR should be transparent, and consistent with the intentions of the new law as it will apply to charities. This would suggest that appointments should be made through an independent process, rather than by government Minister. Furthermore, it is suggested that by excluding those already involved in the charitable sector from appointment, there is a risk that a considerable body of experience and expertise is lost to the regulator. AFS would suggest that tenure is specific, say for 3 to 6 years, that the appointee should be responsible to the OSCR and not the Minister, since the suggested model appears to contradict the principles of good governance. It is also suggested that membership from the profit making or commercial sector should comprise no more than 25% of the membership of OSCR.
- (c) Functions of the OSCR – AFS is concerned that the matter of informing the public of issues with organisations is important, but care should be taken about the process. Would information on issues be posted prior to or post investigation? It is important to acknowledge and recognise the extremely vulnerable position a charity could be placed in the course of investigating issues or allegations about them, especially if these issues were proven to be unfounded. Where notification of a charity is posted, it should clearly indicate the issues, and specify the actions required to remedy them, with associated timescales. And when the notified charity has satisfied OSCR that should be posted with the date of satisfaction, thus publicly clearing the good name of the Charity.
- (d) Appointments to the Scottish Charities Appeals Panel – There could be some difficulties with the recommended appointments process. In order to ensure objectivity, it is suggested that if appointments are made to the OSCR by government Minister,

then appointments to the Appeals Panel should not involve Government Ministers. However, if the obverse were to be the case, then appointments should be made by Ministers.

- (e) Charity Stewards – It is suggested that this term could be redefined as Charity Trustee, in line with the definition appertaining to English charities. This would perhaps avoid the potential for confusion, particularly for those charities which are UK wide. It is suggested that ‘stewards’ should be appointed by means of a transparent process, and have a fixed, maximum term of office. Their role should be clearly defined, and should;
- Exclude senior executive staff of the organisation;
 - Be able to take a strategic view of the needs and operations of the organisation
 - Be able to govern the strategic direction of the organisation;
 - Be able to take an objective position on issues affecting the organisation; and
 - Use any special knowledge and expertise that it is reasonable to expect of a person.
- (f) Fundraising – AFS would favour self regulation, given that Scotland has a small fundraising community, which should be able to effectively monitor practice. However if this fails to work effectively, then the OSCR should take this role.

3. General points

AFS would suggest that where there it is likely that supplementary regulations are to be introduced, then these should be subject to a public consultation process.