

Draft Charities and Trustees Investment (Scotland) Bill

**Response from Contact a Family Scotland,
Dèan Ceanglaichean le Teaghlaichean**

To the Scottish Executive consultation

<http://www.scotland.gov.uk/consultations/social/dctib-00.asp>

Contact a Family offers information and support to parents of disabled children and those with additional needs, including children with rare and life limiting conditions. We publish a widely respected Directory of Specific Conditions, Rare Disorders and Family Support Groups. We have a free national helpline for parents. We have a team of 40 Volunteer Local Area Representatives who are parents of children with disabilities. Contact a Family Scotland opened its Edinburgh office in 1998. We are in regular contact with over 500 parents/parent groups in Scotland and our Scottish newsletter has a circulation of over 2500 copies. The Scottish webpage (www.family.org.uk/scotland) registers 3000 hits.

Contact a Family Scotland welcomes this consultation exercise on the Draft Charities and Trustees Investment (Scotland) Bill. We strongly support the proposal to strengthen regulation of charities in Scotland and regard this as an important step in retaining public confidence in the Scottish charitable sector.

1. Charitable activity and public reassurance

1.1 The role of the sector

Contact a Family Scotland is pleased to see the strong statement in support of Scotland's 20,000 charities at the start of Section 2. We are pleased to see this clear acknowledgement by the Scottish Executive of the vital role played by the charitable sector and recognition of its knowledge, skills and expertise.

1.2 Public reassurance

We also support the statements in this section about the importance of encouraging charitable activity and reassuring the public that their money is being well used. We fully support changes in charity regulation to support these two aims. We are aware of recent scandals in the Scottish charity sector which could potentially damage the ability of the sector to work effectively. Even within our own field of work – support for families with disabled children - there has been concern over the activities of an organisation which has featured prominently in the Scottish press. Moving to a "robust, effective and proportionate regulatory system for Scottish charities" will be very welcome.

2. Transition to the new legal framework

We were pleased to see the establishment of the Office of the Scottish Charities Regulator (OSCR) and its role in managing a smooth transition to

the new legal framework. The issue of transition will be one that many organisations are concerned about and reassurance that the process will be well managed and effectively implemented will be helpful. Organisations will need to know that any financial aspects of transition will be dealt with sensitively and appropriately. Funding bodies will also need to be reassured through the transition process that organisations that they are funding will be assisted in moving smoothly to the new regulatory framework.

3. Key principles for regulation

Contact a Family Scotland fully supports the five key principles for effective regulation – independence, proportionate, accountable, transparent and consistent. We were pleased to see independence placed at the head of this listing. We believe that this is an important acknowledgement about the value of the sector being seen to be independent of other sectors of society. Such independence is a key characteristic and gives considerable strength to the sector – not least from the people who use its services. We fully support the other four principles and regard them as essential to effective regulation.

4. The definition of charity

4.1 Charitable purposes

We support the charitable purposes as outlined in section three of the consultation paper. Our own work with families with disabled children clearly falls across many of the categories, including, “prevention or relief of poverty”, “the advancement of education”; “the advancement of health”, the advancement of community development”, “the advancement of human rights” and “provision to people with disability, young people or children”. We would expect the work of many other charities to fall across several categories in the same way. We note the comments on the impact of these proposals on “UK-wide tax relief for all charities and the requirements of cross-border charities in Scotland” and the value in keeping definitions “as similar as we can on both sides of the border”. As a charity in this “cross border” position, Contact a Family Scotland welcomes this approach.

4.2 Public benefit test

We also agree with proposal that there should be a public benefit test as the second stage test for organisations seeking charitable status. We support the proposal that OSCR should provide guidance on interpreting public benefit and that there should be further consultation with the voluntary sector on this matter.

5. A statutory charities regulator in Scotland

We fully support the establishment of a statutory charities regulator in Scotland. We also support the proposed functions as listed (s1-6). We believe that it will be important for OSCR to maintain a publicly accessible register of all bodies eligible to operate as charities. We note the

expectation that charities registered with OSCR will have access to UK tax reliefs.

6. Dual Registration

We note the discussion that charities which are registered in England and operate in Scotland will be subject to more than one regulator. This describes the position of Contact a Family Scotland. We fully support the statement that any charity operating in Scotland should be subject to the requirements of Scots Law, and that such dual registration and regulation is fully justified. We are encouraged by the statements by the statements that –

- “in practice, information technology and sharing of information between regulators will mean that charities should not be unduly burdened by the requirement to register in two places and comply with two regulatory processes”.
- “OSCR will be expected to co-operate with other regulators (for example the Charity Commission or Companies House) to minimise the burden of registration on charities already registered elsewhere”. (s23)
- “There is no requirement for UK charities, for example, to provide separate Scottish accounts or reports to OSCR. They will be expected to provide consolidated information on their UK operations to OSCR in the same way as they currently do to the Charity Commission. However, OSCR will only take action regarding their Scottish activities”.

These statements provide reassurance that the level of additional resource needed to meet the requirements of dual registration will be at a modest level. Any significant additional costs would be likely to come in the short term from resources currently supporting direct services. This could make the transition to the new framework more difficult. It will be important that funding bodies are kept fully informed to these developments and any new costs relating to registration are fully understood by potential funders and supporters. Supportive transition arrangements will be important for all Scottish charities.

7. Safeguarding OSCR's independence

Contact a Family Scotland supports the characteristics listed for the function of the regulator. We were pleased to note the emphasis given to the independence of the regulator. In particular we were pleased to see the clear statement that, “OSCR will not be subject to the direction or control of Scottish Ministers”. The robust application of public appointments principles to ensure a degree of objectivity sufficient to safeguard OSCR's independence will be essential.

We also fully support the principles of regulation work within a framework of accountability as set out in the consultation paper. We feel these are essential for transparent and open working of the regulatory framework.

8. Charity board members/Charity stewards

8.1 Terminology

Contact a Family Scotland was pleased to see the comments in the consultation paper about the thousands of people from all walks of life across Scotland who give time to volunteering on charity management boards. We were pleased to note the recognition that without their energy, skills and enthusiasm, the charity sector, and Scotland as a whole, would be much the poorer. The consultation paper proposes a new term – “charity stew ards” for members of charity boards. This has little public recognition currently. We would prefer to see a term which has more ready public acceptance such as “charity board member”.

8.2 Duties of board members

We regard it as helpful that the duties of such board members are based on those that already exist in company and trust law, and that setting them out clearly in the Bill will create a clear vision of the regulator's expectations. This will be very helpful for board members themselves. We fully endorse the proposed duty that board members always act in the best interests of the charity and ensure it follows its charitable purposes. We welcome the clarity of the statement that charities' governance should be independent from government, funders and other external interests.

8.3 Disqualification categories

Contact a Family Scotland believes it is helpful to set out types of people who will not be allowed to be charity board members. We agree with the categories of people disqualified including - people convicted of an offence involving dishonesty; undischarged bankrupts; people subject to disqualification under the Company Directors Disqualification Act 1986; and people who have previously been removed as charity stewards due to mismanagement or misconduct.

8.4 Effective regulation is essential for public trust

We fully support the Powers to deal with wrong-doing in charities outlined in the consultation paper (s24-33). It is clear that recent high profile cases have highlighted public concerns and that there is a need for effective and prompt action to be taken in these circumstances. In particular we were pleased to see the new power for OSCR to freeze bank accounts. Effective regulation is essential if public trust is to be fully restored.

9. Charity reorganisation for more effective operation

We note that section 54(3) sets out reorganisation conditions and these appear to relate principally to situations where the charity has run its course. It does not appear to address the concept that reorganisation

might permit the charity to operate more effectively and increase the public benefit, unless that is intended to be implicit in 54(3)(iv), in which case it could be more explicit. We also note the "spirit of its constitution" is a phrase which could give rise to debate.

10. Fundraising

We agree with the statement in the paper that "fundraising from the public is one area where trust has been significantly dented". We support the foundation of statutory regulation of charity fundraising as set out in the draft Bill. We agree with the proposed measures outlined under General Fundraising Powers (s60-62), Fundraising by Professional Fundraisers and Commercial Participators (s61-63), Self-regulation and its effectiveness (s64), and Public benevolent collections (s65-71).

11. Transitional arrangements for existing charities

11.1 Achievable time scale

Contact a Family Scotland were pleased to see recognition that time will be needed time to establish OSCR in its new form, and to give the charities sector time to consider the implications of the legislation. Implementation of the legislation from spring 2006 seems to us to be a sensible time scale and an achievable one.

11.2 Transitional process for existing UK charities

We note that "existing recognised Scottish charities will be automatically transferred" onto the new Scottish charity register. They will continue to receive UK tax reliefs and other benefits, such as rates relief. OSCR will then systematically review the register and seek information from charities to ensure they fit the new definition, and are complying with the regulatory system". However it is not clear to us from this description how this transitional process will work for existing UK charities working in Scotland and moving to dual registration. Clarification of this point would be helpful to us.

11.3 Commencing the process of dual registration

We are aware that any new funding applications we make to Scottish funding bodies are likely to be cross-checked with the new Scottish register. We are also aware that as a UK charity registered with the Charity Commissioner we do not appear currently on the new Scottish register and it is not clear to us when we can begin the process of dual registration. In this transitional phase we are concerned that we may miss funding opportunities for our work in Scotland. Clarification on this would be helpful.

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