



**Response to the Consultation
on the
Draft Charities and Trustees Investment (Scotland) Bill.
August 2004**

Introduction to Aberlour - A Scottish Charity for Scotland's Children

Since it was first established 129 years ago Aberlour Child Care Trust has developed a reputation for providing quality community and residential care and support services for vulnerable and disadvantaged children, young people and families. In the last year we have worked intensively with over 1200 children and offered informal advice and support to a further 5000 children and young people through 42 projects across Scotland. Our services currently offer:

- intensive supports to severely disabled children and young people, many of whom have profound communication and behavioural difficulties
- residential and outreach support to families affected by drugs and alcohol
- a range of community and family centre based services to promote and enhance positive parenting, play, early learning and social skills with vulnerable families and young children;
- residential care and community programmes for children and young people with social, educational, emotional and behavioural difficulties.
- drop-in advice, information and counselling services for teenage children and young adults on issues affecting them, including sexual health.
- preventative, crisis and ongoing support to children and young people who have or are in danger of running away from home

The Aberlour Child Care Trust welcomes the opportunity to comment on the draft Charities and Trustee Investment (Scotland) Bill. This response has been prepared by members of the governing body and senior management.

1. Charity Regulation.

We welcome the setting up of OSCR as the regulating body and agree with the five key principles for regulation.

2 **Charitable purposes.**

We feel that it is important that the definition of charitable purposes should be the same both north and south of the border. There are currently minor differences which could cause problems in the future and we would recommend that the definition should be the same as for England and Wales.

3 **Public benefit.**

The consultation document proposes that the Regulator should issue broad criteria and guidelines for the definition of public benefit. We believe that if public benefit was to be too narrowly defined there would be serious implications for a large number of charities of all sizes. We would therefore recommend that the Scottish Parliament should determine the principles of public benefit in primary legislation and allow OSCR to interpret these, subject always to challenge in the courts.

4 **Role of Charity Regulator.**

We believe that it is vital that the Charity Regulator should be totally independent of Government.

While we are aware that the Regulator will need to be both a "policeman" and a "friend" we believe it would be impracticable for two separate bodies to carry out these tasks and therefore agree that OSCR should carry out the functions.

However we believe the support function to be of the utmost importance and recommend that OSCR emphasise the support it will be providing.

5. **Form of the Regulator.**

It is important that the regulator and members of OSCR are not only independent of government but are also experienced in charity matters and the charity sector. It is therefore important that individuals appointed to OSCR should have this relevant experience. We would also expect that such individuals would be of sufficient professional standing that they would recognise and declare any conflicts of interests when appropriate. We therefore disagree that a member of OSCR should not be a Charity Trustee.

6. **Charity Stewards.**

The term Charity Trustee is well understood and we believe that introducing a new term would be counter-productive and confusing.

"Trustee" carries well established gravitas that is clearly of a different order of responsibility and obligation than attaches to marshals on golf courses or flight attendants. The title of the bill refers to Trustees and not Stewards. We therefore recommend that the term "Charity Trustee" is the most appropriate.

In addition we would request that for the avoidance of confusion, the term and associated duties are more clearly defined in the legislation.

7. Fundraising.

We recognise the importance of regulating charity fundraising and welcome this section in the draft. There is one area of fundraising which should perhaps be under a separate section, namely that of trading.

Trading companies are an important mechanism for charities to increase income for the purposes of the associated charity. There are however substantial additional administrative costs associated with setting up and running a wholly owned trading subsidiary. We believe it would be appropriate for a reasonably high level of turnover to be set as a de-minimus limit before the need for setting up of a fully constituted trading company under the Companies Acts. We would suggest a figure of a turnover equivalent to the turnover threshold for smaller companies. We appreciate that this proposal would need further consideration and consultation with the Inland Revenue, however the benefits of the saving in compliance and administration costs would be large and provide savings not just for charities but also for the Inland Revenue.

In addition difficulty is often experienced in financing the working capital of a trading subsidiary. We would suggest that it should be acceptable for the parent charity to give a reasonable loan in order to finance the trading company. This may well be a matter to be considered by the Inland Revenue, but it is important that OSCR and the Inland Revenue agree on this subject.

8. Charity reorganisations.

The involvement of the Sheriff Court to assist with reorganisation schemes, supported by OSCR, is welcomed. However you will appreciate that there are a substantial number of charities constituted under Acts of Parliament, Statutory Instruments or Royal Charters. We recommend that consideration should be given to include in the legislation a means by which such a charitable body may reorganise its constitution without necessarily requiring the expense of going to the Scottish Executive for a change to their Acts of Parliament, Statutory Instrument or Royal Charter.

9 Scottish Charitable Incorporated Organisations (SCIO)

We welcome the proposal to set up a new legal entity allowing charities to become corporate bodies with limited liability. The draft bill is, however, short on detail as to how these bodies would be constituted and we look forward to receiving further details.

10. For further information

We hope the above comments are helpful and would be pleased to provide clarification or further information regarding any of the points raised. Similarly if you would like additional information about the work of Aberlour Child Care Trust and/or would be interested in visiting any of our services please do not hesitate to contact Nigel Fairhead, Director of Finance at:

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