



**ASC response to Scottish Executive consultation on Draft Charities and  
Trustee Investments (Scotland) Bill**

**August 2004**

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The Association of Scottish Colleges (ASC) is the policy and representative voice of colleges across Scotland. The college sector is the largest provider of post-16 education and training in Scotland, with over 500,000 enrolments in 2001/02.

### **1. Summary**

- Charitable status is of great value to the college sector;
  - ASC supports the aim of this legislation to ensure proportionate regulation of Scottish charities;
  - Regulation of long-established charities such as colleges with a record of good and responsible management should be with as light touch as possible;
  - The college sector is already subject to extensive legislation and regulation in respect of its governance, functions and financial accountability. This should be taken into account when putting into place any further regulatory burden in respect of the charitable status of colleges.
- 1.2 The proposed legislation should not affect the college sector's ability to function as effectively as possible. The proposed legislation should not cause unnecessary additional cost to colleges. Extra unduly onerous bureaucracy should be avoided.

### **2. Introduction**

- 2.1 All incorporated colleges of further and higher education in Scotland are registered as charities. ASC is also a registered Scottish charity. Our assumption is that this position will remain unchanged in the future.
- 2.2 ASC understands that regulation of public fundraising by charities is the main aim of the proposed legislation. Such fundraising raises only a very small proportion of college's income.
- 2.3 ASC has identified the following important areas of concern within the proposed legislation:
- Governance
  - Financial Regulation
  - Merger
  - Transitional Arrangements
  - Public Benefit Criteria
  - Proportionality
  - Fundraising

- Subsidiary Companies

### 3. **Governance**

- 3.1 The legal framework of college Boards of Management is set out in the *Further and Higher Education (Scotland) Act 1992*. The composition of college Boards of Management is detailed in this legislation.
- 3.2 Governance structures in the further education sector and provisions in the proposed Bill effectively mean that members of Boards of Management will be the 'charity stewards'.
- 3.3 Sections 50, 51, 52, giving eligibility criteria and the powers to remove 'charity stewards' seem to conflict with the *Further and Higher Education (Scotland) Act 1992*.
- 3.4 There is an inconsistency in these sections with respect to individual and collective liability and culpability. ASC supports accountability of those with ultimate responsibility for the governance of charities. ASC is however concerned this new legislation should not deter competent people from serving on college Boards of Management.
- 3.5 Section 50 (1) (c) states:  
'(c) where exercising functions as a charity steward in the course of a business or profession, use any special knowledge and expertise that it is reasonable to expect of a person acting in the course of that business or profession.'
- 3.6 Clearer guidance is needed on the standard expected of 'professionals' who serve as 'charity stewards' as individuals and not by way of section 50(1) (c).
- 3.7 ASC suggests that the term 'trustees' might be used instead of 'stewards'.

### 4. **Financial regulation**

- 4.1 Colleges raise income from a variety of sources, including the Scottish Executive, European Structural Funds, and other commercially generated income. Colleges are encouraged to maximise their income from sources other than public funds.
- 4.2 Public funding is received through the Scottish Further Education Funding Council (SFEFC) and is subject to stringent financial regulation. SFEFC issues accounts direction to all SFEFC-funded higher education institutions. This requires compliance with SFEFC's Financial Memorandum.
- 4.3 SFEFC directs that institutions comply with the *Statement of Recommended Practice: Accounting for Further and Higher Education*

- (SORP) in preparing their financial statements which have to be returned to SFEFC.
- 4.4 Under the terms of the Public Finance and Accountability (Scotland) Act 2000 the Auditor General for Scotland is responsible for securing the audit of each incorporated college.
  - 4.5 Audited financial statements for their entire financial operations are therefore already returned by the sector.
  - 4.6 Funding from other sources, such as European Structural Funds, is subject to existing financial accountability requirements.
  - 4.7 ASC recognises that the college sector is not unique among bodies subject to the proposed Bill, in being subject to existing sector-specific legislation and accounting regulation. ASC is concerned however, that elements of the consultation document and Bill do not take account of these existing checks and regulation on the further education sector.
  - 4.8 ASC welcomes the inclusion of Section 23 (Co-operation) in the draft Bill. This imposes a duty on OSCR to 'seek to secure co-operation between it and other relevant regulators'.
  - 4.9 There is no provision for 'other relevant regulators' to co-operate with OSCR. ASC considers that the Bill should include a provision to recognise existing financial accountability processes applicable to Scottish colleges. It is not clear whether SFEFC falls within the definition of 'other relevant regulators'. ASC considers that SFEFC should fall within this definition.
  - 4.10 ASC considers that since there are existing accountability checks by SFEFC, these should be acceptable to OSCR. Colleges wish to avoid unnecessary and uneconomic duplication of accounting in different formats to different regulators. ASC suggests that divergence in SORPs should be avoided.
  - 4.11 As far as possible the existing SFEFC Financial Memorandum, FE SORP and audit arrangements should be the starting point of any accounting process to OSCR in relation to the further education sector.
  - 4.12 ASC favours OSCR accepting the same level of accounting as is required to be returned to SFEFC. No divergence in standard and format of accounting information should be required of the sector for OSCR's purposes.
  - 4.13 Section 36(5) of the draft Bill gives scope for the existing form of accountability to SFEFC to be acceptable for OSCR 's purposes.

## 5. **Mergers**

- 5.1 The Office of the Scottish Charities Commissioner's (OSCR's) powers to approve amalgamations of charities and to reorganise charities seem inconsistent with procedures required to be followed in the case of mergers of Scottish colleges.
- 5.2 Glasgow College of Building and Printing and Glasgow College of Food Technology are in the process of merging to form Glasgow Metropolitan College in 2005. Fife and Glenrothes Colleges have also announced their intention to merge. It would be reasonable to expect more college mergers in the sector in the future.

## 6. **Transitional arrangements**

- 6.1 ASC understands that OSCR intends to review the Scottish Charities Register and seek information from charities to ensure they fit the proposed new definition of charitable purposes. ASC expects that Scottish colleges (and ASC itself) will fit the proposed new definition.
- 6.2 ASC welcomes the inclusion of 'advancement of education' as one of the thirteen criteria of the new 'charity test' and the requirement that OSCR must issue guidance on the charity test.

## 7. **Public benefit criteria**

- 7.1 ASC considers that OSCR should provide guidance on the interpretation of 'public benefit'. Whether broad criteria are on the face of the Bill or decided by OSCR the first four proposed criteria at page ten of the consultation document are acceptable.
- 7.2 The fifth, 'Public benefit is not affected by any charge for services providing charges are set at a level that does not exclude or deter a substantial proportion of potential beneficiaries', conflicts with the requirement to charge student fees set by government, the requirement to charge full economic cost of teaching to non-EU students and the requirement to have prudent financial management. Some people inevitably may not be able to afford the fees and may be 'deterred'.

## 8. **Proportionality**

- 8.1 Page 7 of the consultation says:  
'different types or sizes of charity will be expected to provide proof of compliance in different ways suited to their circumstances,' and to 'set thresholds in secondary legislation, to ensure that charities with lower incomes are subject to less stringent information requirements than, say, multi-million pound charities'.

This will impact on colleges as they are already regulated as detailed before and derive a very small proportion of their income by fundraising directly from the public.

9. **Fundraising**

9.1 'Fundraising' is not specifically defined in the draft Bill. The provisions in the Bill should indicate whether Part 3 relates only to fundraising directly from the public.

9.2 ASC welcomes the indication in sections 60 to 64 that employees of the body with charitable status who fundraise on its behalf will not be under the specific duties imposed on 'Professional fundraisers'.

10. **Subsidiary companies**

10.1 The Bill is unclear on the effect of the legislation on subsidiary companies which are not registered charities in themselves.

11. **Specific consultation questions not already covered.**

11.1 ASC has no strong views on the appropriateness of the proposed form of OSCR as a Non-Ministerial Department or of its appointments and functions other than to emphasise the importance of co-operation with 'other relevant regulators' to avoid duplication of accountability for the further education sector, as already detailed in this response.

12. **Further Information**

12.1 If you require further information on any of the points made above or have any queries, please contact Neil Cuthbert, Policy Adviser (Tel: 01786 2104, e-mail [neil.cuthbert@ascol.org.uk](mailto:neil.cuthbert@ascol.org.uk)) in the first instance.

**ASC Executive  
25 August 2004**