



Girlguiding Scotland

CHARITY LAW CONSULTATION RESPONSE

Girlguiding Scottish welcomes the opportunity to respond to the Scottish Executive consultation on the draft Charities and the Trustee Investment (S) Bill.

As a volunteer-led organisation, operating as a charity recognised by the Inland Revenue in Scotland, and as an unincorporated association, our particular concerns centre around,:

- The need to ensure that any regulatory framework, which supports and promotes good practice in charity governance, is also “volunteer-friendly” and is not so severe or bureaucratic in its approach as to deter volunteers from taking on volunteering responsibilities. We, for example, rely on volunteers to deliver the significant benefits and opportunities of our programmes to over 55,500 girls and young women in local communities across Scotland, and we are keen to ensure that legislative and administrative requirements recognise volunteer issues.
- Volunteers’ current concerns about the potential trustee liability, which may attach to Trustees of an unincorporated association.
- The structural or constitutional issues affecting a separate Scottish body, which is also part of a UK wide organisation operating in England on a different constitutional basis, and the desire to harmonise these as far as possible.
- Ensuring that local parts of our Scottish organisation (such as local Guide or Brownie units) can continue to operate as part of our Scottish organisation, without the requirement to obtain separate charity status - for example, to obtain gift aid benefit, but can do this through the parent Scottish organisation.

Girlguiding Scotland recognises and supports the principles of sound charity governance, and responsible and accountable management in all areas. We fully support the general principles in the “Vision for Charity regulation”, outlined in section 2 of the consultation document – these principles closely reflect those contained within our internal manual and rules.

In response, however, to some of the specific points raised in the draft Bill and consultation document we would comment as follows:

1. Charity definition

We appreciate the intention to harmonise, so far as is possible, the charity definition across England and Scotland. We support the principle of public benefit, and would welcome guidance on the broad criteria for this in the Bill. In particular, and having regard to the “Charitable Purposes”, we would hope that, where appropriate, sufficient interpretive guidance would be available to demonstrate that “the advancement of education” is deemed to include, for example, informal education, non-formal education and community education. This would presumably fall under OSCR’s remit in terms of section 7 and 8 of the Bill. We also support SCVO’s proposal that the defining characteristics of a charity should include having volunteer leadership, and being independent.

2. Charity Regulation and Supervision

We support the proposed role and remit of OSCR, but would suggest that this should be the form, which demonstrates most distinctly its independence from government. We are increasingly aware of the indirect political / funding / policy influences that can affect charities and their programmes and aims, and would support regulatory mechanisms which, in addition to being independent of the charitable sector, also demonstrate independence from executive or other policy influence, whilst at the same time supporting and promoting good governance, management and decision making.

3. Charity Steward role

We have no specific recommendations as to whether or not the term “Charity Stewards” is appropriate, but would suggest that, if adopted, both the term and the proposed duties will require to be clearly explained to volunteers, to prevent new terminology acting as a deterrent to potential volunteers taking on a board responsibility. We fully support the duties of charity stewards as outlined in the consultation document.

4. Fundraising

We are pleased to note that there is “no intention to increase red tape” for charity fund raising. Within Girlguiding Scotland, small local groups will engage in particular fundraising, often for other named charities, as well as for specific guiding aims (e.g. to repair a local guide hall). Such activities will often take the form of jumble sales, coffee mornings or bag packing at the local supermarket. We would be keen to ensure that such activities can continue without any additional regulatory compliance requirements. We are also pleased to note that charities can seek an interdict preventing unauthorised fundraising in their name. In the interest of Child Protection, however, we would also suggest that consideration should be given to providing protection for children from potential fundraising exploitation, e.g. minimum age for participation in public benevolent collections.

5. Dormant Bank Accounts

We have experience of a number of dormant bank accounts held by local groups / units which have been part of Girlguiding over the last ninety years, but no longer exists due to referral of volunteers / demographic changes etc. They are generally, not groups which are separate charities themselves, but usually have been part of Girlguiding Scotland. We would support any provision which would allow release of these funds, through ourselves as the national organisation, for use in same general area or for use for the same general purpose. We would like to ensure appropriate mechanisms are in place for OSCR to deal with Girlguiding Scotland as part of its "reasonable enquiries" under S34 (1) (c) of the Bill in dealing with such accounts. (There does not appear to be any guidance given in either the Bill or the consultation document as to what constitutes "reasonable enquiries").

6. Accounting and Reporting

As indicated at the start of the response we fully support the needs for appropriate regulation of, and accountability by, charities. However, we wish to ensure that the processes and requirements (including language, documentation and information access) are provided in ways, which are reasonably "volunteer friendly". All those involved in Girlguiding Scotland, and the groups within it which are currently recognised as separate charities, are committed to ensuring the good management of the organisation, as well delivery of a quality service to members. However, in order to facilitate compliance, we would urge OSCR to ensure accounting and reporting requirements are clearly explained, and that processes recognise volunteer limitations (e.g. choices between paper forms as well as website downloads, as not every volunteer has access to computer and email.)

7. Scottish Charitable Incorporated organisations

Following considerable discussions with our Board, and advisors, we recognise the limitations, and concerns of Board members, based on trustee liability within an unincorporated association. We are aware of the current alternatives, but welcome the additional potential choice of becoming an SCIO. Despite ensuring good training, and support for Board members, we are aware that, as a result of recent press reports on charities, and other external factors, potential Board members, feel genuine concern about taking up this role, and many therefore feel more comfortable with an SCIO option in which members and stewards have no liability for debts, as suggests in the consultation paper.

Girlguiding Scotland welcomes the clarity and direction, which will be provided by the new legislation, and we hope that the foregoing comments will assist in preparation of the final Bill, which will enhance the role of, and public confidence in charities in Scotland, rather than prove a deterrent to volunteering.

Our experience of compliance, for example with the requirements of the Protection of Children (S) Act 2003 (not fully in force yet) is that the membership understands the principles and need for compliance, but the practical impact of compliance is

considerable, in terms of time and cost, often at the expense of delivery of service to girls and young women. We do not wish to lose potential or existing volunteers, and therefore wish to recommend that introduction and implementation of the new legislation is done in as “volunteer friendly” a way as possible, whilst at the same time adhering to the principles of sound, responsible and accountable good management.

S.Pitches
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