

184



SCOTLAND

4 Shore Place
Edinburgh
EH6 6UU

**Charities and Trustee Investment (Scotland) Bill
Scottish Executive Consultation
Submission from the British Heart Foundation**

T • 0131 555 5891
F • 0131 555 5014
E • scotland@bhf.org.uk
W • bhf.org.uk

Introductory Remarks

Iain J Lewis • Director

The British Heart Foundation warmly welcomes the production of a Bill to reform charity law in Scotland. Four hundred years ago the concept of charity was set out in the preamble to the Statute of Charitable Uses 1601. This definition, albeit modified by subsequent developments in the courts, still informs the legal definition of charities in Scotland today.

In four hundred years, much has changed. As noted in the consultation, there are now around a million individuals volunteering for charities in Scotland, around £240 million donated to Scottish charities by the public each year, and more than 27,000 charities. The sector is desperately in need of a robust legal framework.

In addition to finding a definition that is more reflective of the society in which we now live, the Executive is also keen to ensure that the public continue to have confidence that, when they give to someone who claims they represent a charity that is what they actually are. This is something that the BHF, and all scrupulous charities in the country, applaud.

As noted in the original McFadden report:

'Charitable status gives organisations certain rights and also places limits on what they can do. Rights include fiscal advantages and being a charity gives organisations a special place in public sentiment as well as encouraging charitable donations and voluntary activity by citizens. Charities are regulated to ensure that they continue to provide public benefit, that they use their funds appropriately and are governed well.'

This is a view that we support. Charitable status is a privilege, and with it comes a responsibility, which the public have every right to expect is being fulfilled. The advent of OSCR and the Charities Bill will ensure that public confidence is maintained and restored for the future. The BHF warmly welcomes the opportunity to respond to this consultation.

Heart Information Line • 08450 70 80 70
ask a heartmate

© 2004 HRH The Prince Philip KG KT
Secretary: Sir Richard Lloyd Br
Chairman: Sir Peter Morris PhD FRB FRCS
Director General: Peter Hollins

All opinions expressed are those of the author and do not necessarily represent the views of the British Heart Foundation.
Registered Charity No. 213286 (England) / 254483 (Scotland)

1. The Definition of a Scottish Charity (s7-8)

We support the proposal to define charitable purpose using the 'two-stage' test. We believe that this will meet the requirements of being appropriate in a Scottish context, while also being acceptable to the Inland Revenue and the Home Office.

We support the public benefit test and the 13 charitable purposes laid out in the consultation. We believe that this will provide for a more rigorous assessment of charitable purpose that will benefit the sector as a whole.

We also agree with the measured approach of allowing OSCR to issue guidance on its interpretation of public benefit, rather than submitting it in an inflexible way on the face of the Bill.

As alluded to by SCVO, we believe that clarification is required as to whether all existing bodies currently recognised as charities will be presumed to provide 'public benefit'. We would concur with the view that has been expressed, however, that government agencies, such as SNH and SEPA, should not retain their charitable status: it seems to us anomalous that organisations under ministerial direction, such as these, are regarded in law as charities, when they clearly do not have the requisite autonomy from government. The public expects charities to be separate from government, and, in the interests of all in the sector, the BHF believe this anomaly should be removed.

However, we support the view in the consultation that public benefit should **not** be laid out in the Bill- that would be overly prescriptive. The correct approach, we believe, is the one laid out in the consultation: that this decision will rest with OSCR, at least in the first instance, and that ultimate supremacy in these decisions will lie with the courts.

2. Establishing a statutory charities regulator in Scotland (s1-6)

The BHF wholeheartedly supports the Executive's intention to establish an independent regulator in Scotland. It is crucial that management of the complexities of the sector are handled by the devolved administration. In addition, we believe it is in the interests of all charities in Scotland that this oversight is visible to the public. The general public need the assurance that when they give to charity, the law will protect them. The best way of ensuring that this accurate perception is borne out is for the Scottish Executive, and now OSCR, to take the lead.

We support the proposal to establish OSCR as a Non-Ministerial Department (**s1-2 and Schedule 1**), and accept that this function will provide the best balance between separating OSCR from political involvement, and also allowing it the necessary powers of scrutiny.

Some concerns have been expressed about the possible effects that the establishment of what would effectively be two separate charitable legal systems on charities such as the BHF, with significant operations in England and Wales as well as in Scotland. As the system of accounting required by the Charities Commission

will be as rigorous as that required by OSCR, we do not foresee this posing us a major problem, and we are encouraged by the comments in the consultation (**s23**), and elsewhere, from the Minister that the emphasis will be on a proportionate regime.

3. How charities should be governed

Although we understand there has been some concern expressed by the sector over the use of the term charity steward (**s81**), the BHF are broadly content with these proposals. The duties espoused as necessary for stewards are already required by the Charities Commission, or are already being carried out by the BHF Scotland.

We would be concerned, however, if we were forced to designate a specific Scottish charity steward, to cover our operations in Scotland, particularly if this would require an onerous amount of bureaucracy, as Foundation Trustees based in England already fulfil the requisite criteria.

In addition, we have a specific concern over security and the Scottish Charity Register (**s3**). We accept absolutely the intention that, in order to ensure public confidence in the sector, the Register should be publicly accessible. We do, however, have a specific concern over the information that will be required for the Register. We would have particular reservations about this aspect of the proposal if personal details, such as the home address of a steward, could not be guaranteed to be confidential. This is an issue that will affect a number of charities in Scotland. Medical charities, such as the BHF, are occasionally subject to threats and intimidation from protestors, for example over our support for the use of stem cells in research into CHD. We are aware of other charities, such as those working with victims of domestic abuse, for whom these proposals would pose even greater security risks.

We cannot see any reason why a business address would not be adequate for these purposes, at least for the purposes of the public register.

4. Powers to deal with wrong-doing in charities

We support these proposals, as will all legitimate charities in Scotland. The powers that OSCR will have to investigate and enforce complaints and make its own proactive investigations seem proportionate and measured, and will go a long way to restoring public confidence in the sector.

The establishment of OSCR in these terms will go a long way to dealing with any lingering public doubts about the state of the sector as a whole. The greater speed for dealing with complaints and improved appeals process all will contribute to a regulator that has the support of the sector as a whole which is, of course, crucial.

5. Regulating charity fundraising

The BHF supports the proposals (**s64**) to allow the sector to self-regulate fundraising, with the basic infrastructure laid out in the Bill, and monitored by OSCR. From our point of view, self regulation is much more preferable to statutory

regulation which would be, by definition, much less flexible, and could have an impact on our levels of fundraising.

We recognise that these proposals will offer us protection, either from rogue charities who get the sector as a whole a bad name, or against rogue collectors, who may be misusing the name of the BHF. Tighter restrictions over rogue collections in Scotland are, therefore, very much welcomed by the BHF, as long as the requisite flexibility is an integral part of it.

If, in the event that self-regulation does not work, a move towards statutory regulation is envisaged, the BHF would want to be closely involved in its development, in order to avoid the creation of a regime that will have a significantly detrimental impact on our operations.

We would also like clarification on the section of the Draft Regulatory Impact Assessment that relates to these proposals. This states, in Section 4, Option 2:

'... It should be recognised that there will be some cost attached, as charities will be required to follow revised accounting standards and good practice in governance. This may lead to increased training costs for charity stewards and, where applicable, their staff. Additional time may be spent completing annual returns, although the regulator will be under a duty to minimise the burden of regulation.'

We would urge the Executive, and the regulator, to ensure that, wherever possible, this will apply to new accounts and will not, for example, require us to re-submit any old accounts in the new format. That would pose us a number of logistical problems.

The BHF operate 40 shops in Scotland, with each shop collecting weekly in order to maintain its stock: items obtained in this way account for some 80% of our shops' total sales. We are therefore very pleased that the Executive has decided that the collection of goods will not be included under these rules- such a move would have placed damaging and unnecessary burdens on the operation of our charity shops network. The BHF agrees with the proportionate approach taken by the Executive in this regard, which we believe reflects the fact that, although bogus goods collections could affect the way that the sector is perceived, and the public's willingness to give in the future, they do not pose a significant enough problem to require specific legislation. If problems should emerge in the future with charitable goods collections, OSCR's enhanced powers of scrutiny will ensure it is well placed to advise on future action, if required.

6. Improving the operating environment for charities

The BHF supports the proposals in this section, in particular the proposals which will allow for funds in dormant accounts to be accessed and to widen the powers of investment that trustees currently have.

7. Transitional Arrangements for existing charities

As stated previously, the BHF is satisfied with the assurances from the Minister, the regulator and in the consultation itself that every effort will be made to ensure that the impact of the transitional agreement is minimised wherever possible.



Iain Lewis

Director

British Heart Foundation Scotland