

The Draft Charities & Trustee Investment (Scotland) Bill

Response to the draft Bill and Consultation Paper from Edinburgh Voluntary Organisations' Council

Edinburgh Voluntary Organisations' Council (EVOC) welcomes the opportunity to participate in the Consultation Programme on the draft Bill. The organisation's Policy Committee has been actively supporting the work of SCVO, in particular to achieve reform of charity legislation, and met in August to consider the consultation material, and formulate responses to it.

Because of the considerable scope of the draft Bill, the Policy Committee focused on areas of the Bill considered to be of generic interest to the voluntary organisations it serves, recognising that other responses will focus on areas of interest to a range of specifically focused infrastructure bodies.

EVOC warmly welcomes the draft Bill, and the comments below, will, we believe, enhance its purposes and content.

1 Overall Content

The purposes of reform of legislation are to:

- a) increase public understanding of how charities operate and increase confidence in how they operate
- b) clarify the role of the individuals who have the responsibility of managing the organisations as charities
- c) introduce new requirements for compliance.

These purposes are compatible, as they are addressed in the draft Bill.

2 Charity Definitions

The introduction of definitions, to replace the four current categories is welcomed.

- It is not clear why the provision of accommodation is considered to be a definition, whilst the provision of day resources, for instance, is not included. It is, therefore, recommended that definitions 10 and 11 are compressed to form one comprehensive definition.
- The definitions should include reference to the promotion of social justice, wellbeing and social enterprise.

- The menu of definitions should be preceded by a reference to the promotion, through charitable purpose, of the “common good”.

3 Public Benefit

- A definition of Public Benefit should be included in the Bill. This would increase transparency and present an environment in which charity purposes and activities can be scrutinised, thus evidencing and ensuring compliance with a definition of “public benefit”. In addition the clarity which a definition would provide for members and funders of charities, and for the public, most importantly it would provide it for the organisations’ beneficiaries.
- There is some concern if a test of public benefit would include the numbers of or range of individuals that a charity must evidence it is accessible to. If so, this could disadvantage, for instance, self help groups, which by the nature of their interest or concern, may only be of benefit to a low proportion of the general population.
- The fourth and final proposed criteria for Public Benefit as laid out in the consultation paper (pp11) refers to charges for services not “excluding or deterring beneficiaries”. If this is to be included there would need to be reference to the level of fees which may require to be levied to beneficiaries by the processes of commissioning of services, and which can deter individuals from accessing services.

4 Charity Governance

- The establishment of the Scottish Charitable Incorporation Organisation as a legal forum is welcomed. Being specifically designed for non-profit organisations, it will enhance perceptions of the distinguishing features of the sector.
- The transition process will doubtless be lengthy and whilst it will not be mandatory for organisations to adopt the new legal status, it is likely that many will wish to do so over the next few years. There is a danger that the public may be confused, particularly during this period of transition, about the increasing legal forms of charities. To minimise this, a Communications Strategy to profile the change should be adopted, and implemented, (notably during the first few years following the passing of the Bill by the Scottish Parliament) to increase public understanding of the changes.

- The term “Steward” is not considered to be an appropriate term for individuals holding the responsibility for the governance of charities in Scotland.
- Staff employed by Charities should not be eligible to become Directors of the charity for which they work.
- Charity Directors/Trustees should not receive payment for their duties in this capacity. However, the draft Bill does not provide clarity on the position of employees of charities, who, in the pursuance of their duties for their employing body, act as Directors of other Charities. We believe that this practice, which is common, should not be removed through the legislation. The constitutional framework of this organisation, for example, states that its governing body must be drawn from its membership i.e. local charities. Some member organisations put Committee members forward, others nominate staff. This leads to effective and participative governance. The removal of this model within the sector would seriously disadvantage charities, particularly smaller ones, which rely on a wide range of experience and skills to be brought to effective governance, skills and experience which can be brought by individuals working in the sector, governing in partnership with volunteers.
- The proposed requirement that Directors/Trustees with business or professional expertise use “specialist knowledge or expertise” should be removed. Duties are clearly laid elsewhere in the Bill and cover every individual holding the responsibility of governance.
- The specific responsibilities of Trustees/Directors of Charities which hold funds on behalf of other charities should be referred to in the Bill.

5 Regulation

- EVOC welcomes the establishment of the O.S.C.R.
- The Bill should include clarity on the process of appeal and how charities will be supported if they are seeking to appeal against a decision of the O.S.C.R.
- Whilst welcoming the transparency that will emerge as a result of the introduction of the Scottish Charity Register, there is some concern about personal information held about Trustees/Directors which could be disclosed to members of the public and which could then be used in the pursuance of vindictive action.
- Clarity is required by the Sector on how the O.S.C.R. will liaise with other

6 Resource Implications

The introduction of the Bill will require considerable action by many charitable organisations. There will be a requirement for information sharing, and profiling to the sector. Organisations will require training to meet requirements for effective governance, compliance, accounting practices etc. The real costs, in terms of providing staff and Trustees/Directors with information and training require to be recognised by the Scottish Executive, and early consideration given to how they will be met. EVOG also considers that a resourced Unit within SCVO should be set up for a designated (transition) period and resources made available to local and specialist infrastructure bodies to work with SCVO to provide focused resource services for national and local delivery.

7 Equalities

The Bill should make reference to the requirement on charities to discharge their functions in compliance with equalities legislation.

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