



Response to the Draft Charities and Trustee Investment (Scotland) Bill

Capability Scotland is the country's leading disability organisation working for a just Scotland. We work with children, adults and families living with a disability to support them in their everyday lives. We are a leading provider of flexible, person-centred services for children and adults with a range of needs and disabilities. Social justice is at the core of our ethos and we campaign on this by working with disabled people, their families and carers to influence policy legislation, practice and attitudes.

As an organisation, we have played a full role in the development of the new legislative framework for charities. We are proud to have done so and to have made a significant contribution to the proposals contained in the bill.

We welcome the Charities and Trustee Investment (Scotland) Bill and the opportunity to comment on it in this draft stage. We would welcome the opportunity to provide further information or evidence on the bill. In this regard, please contact:

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Part 1, Chapter 1, Section 1 Officer of the Scottish Charity Regulator
Capability Scotland fully supports the establishment of a charities regulator in Scotland.

Part 1, Chapter 2, Sections 7 – 8 Public Benefit

Capability Scotland agrees that it is important that the definition is sufficiently flexible to allow the sector to evolve and adapt to changing social norms and circumstances in the sector. However, there is a risk that leaving the interpretation of public benefit entirely in the hands of the Regulator and the Courts could cause problems. We are particularly concerned that this flexible use of the definition could result in some rogue charities slipping through the net. If there are no clear cut criteria used to define public benefit, it makes it very difficult to argue against an organisation with charitable status that it does not display public benefit. Having an established set of criteria would also be beneficial in terms of promoting public confidence in the work of the sector.

Capability Scotland recommends that criteria covering a broad definition of public benefit be included in the legislation to act as guidance to charities and the general public. These criteria should be:

That the benefit should be:

- Available to the public as a whole

Or

- Available to a particular section of the public

And that benefit should aim to:

- Alleviate or overcome disadvantage
- Promote understanding and knowledge
- Promote exceptional talent which would otherwise not be promoted

Further, the legislation should make clear that the benefit

- Can be material or non material
- Must outweigh any possible public harm

It would be the responsibility of OSCR to monitor the appropriateness of the criteria in line with any developments in the sector or society. As with other legislation, the provisions of the the bill could be reviewed and reformed to reflect any changing circumstances or unintended consequences.

Part 1, Chapters 3 and 4 Information about and Supervision of Charities etc

Capability Scotland considers that OSCR must be established in such a way that its role as a regulator is balanced and does not result in further bureaucracy for charities. OSCR needs to take a reasoned approach that allows charities, in their capacity as fundraisers in particular, to carry out their work in the chosen tone of the individual charity. We hope that in OSCR's capacity as regulator, it will provide information and advice on charity practice as an organic extension of this role, although this will require to be carefully managed. Our organisation agrees that it is neither practicable nor

desirable to set out the distinction between OSCR's regulatory and advisory roles in legislation.

The intention for OSCR to work alongside existing support services for charities is a welcome one. This will help ensure that all charities have access to the support they need to understand and comply with the new arrangements for this Bill. Capability Scotland considers that strong practical mechanisms are required to ensure the flow of information between OSCR and these existing agencies to minimise any gaps in information. These must be appropriately resourced.

Part 1, Chapter 6, Scottish Charitable Incorporated Organisations

Our organisation is concerned at the proposed option of non liability for SCIO board members. There is a risk that board members may make more rash decisions than they would if liable for the cost of their decisions. Capability Scotland would prefer that limited liability be retained as an option.

Part 1, Chapter 8, sections 50 –52 Charity Stewards

While agreeing that there is a need for a legal term for charity board members in Scotland, Capability Scotland does not consider the term "charity steward" appropriate. The term 'charity trustee' is more widely understood and accepted among the general public. It is also a more accurate title for charity board members. Moreover, given the significance of some of the changes proposed in the bill we do not believe it is worth confusing existing trustees and the general public by unnecessarily changing existing terminology. Capability Scotland would therefore urge that the term 'charity trustee' is maintained and used as the legal term.

Part 3 Fundraising and Funding for Benevolent Bodies

Capability Scotland is a member of the Institute of Fundraising and concur with the response submitted by them on funding and fundraising matters. We would specifically emphasise the points and recommendations made by the Institute about public benevolent collections.

Conclusion

Capability Scotland recognises the need for a strong regulatory framework to monitor and provide guidance to the charities sector and to protect against fraudulent charity activity and misrepresentation. Just as importantly, such a framework should promote and foster the vital and often, unique work charities do. Capability Scotland considers that the proposed bill substantially achieves its purpose. It will help create the environment required by the charitable sector in Scotland to continue making its vital contribution to society in the future.

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