

24 August 2004

Myra Watson
Charity Bill Consultation
Voluntary Issues Unit
Scottish Executive Development Department
2-G Victoria Quay
EDINBURGH
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Friends of the Earth Scotland

Dear Ms Watson

**Charities and Trustee Investments (Scotland) Bill Consultation
Friends of the Earth Scotland response**

Friends of the Earth Scotland warmly welcomes the draft Charity Bill and the proposed changes which should ensure that charities operating in Scotland do so in a transparent manner which builds public confidence.

SECTION 2 - VISION (page 6)

We would reinforce strong support for the principle of proportionality throughout. The consultation fully recognises the need for charities of different sizes and complexities to be overseen proportionally but there should always be the scope for more stringent regulation being extended whenever any misdemeanours arise.

SECTION 3

1 Definitions and charitable purpose (pages 8 and 9)

The Bill should enable fit with definitions in England and Wales whilst ensuring definitions that “make sense to the Scottish public“ and fulfil their aspirations and expectations. The end result should be administratively, legally and financially manageable across the border.

This should not prevent Scotland from adopting a more robust and inclusive approach to both charitable purposes and charitable activities that matches the spirit and aspirations of the Scottish people. It should be explicit and clear that service delivery, education and campaigning are equally valid means of delivering charitable purposes. Moreover, the opportunity to be more forward thinking and inclusive in the definition of charitable purposes should not be missed. In particular we advocate that the promotion of sustainable development should be an explicit charitable purpose (as long as it is, as with all charitable purposes, carried out for public benefit).

This would be broadly in line with the decision of the Charity Commissioners on the Environment Foundation (see <http://www.charitycommission.gov.uk/registration/pdfs/environmentdecision.pdf>)

2. Public benefit (question page 11)

We agree that OSCR should be allowed to interpret what constitutes public benefit. OSCR would need to publish guidance as to how they will interpret public benefit in order to have transparency, and the interpretation needs to be consistently applied. The interpretation also needs to be broadly consistent with that for charities in England and Wales, for charities active in different parts of the UK.

unnecessary or unwitting inhibition as for example, more radical concepts of sustainability become more accepted.

3. Establishing OSCR (pages 11 to 16)

Much will depend, in practice, on what is provided for in subsequent Regulations (eg information flows, form of accounts etc). We would like opportunities to comment on these in due course.

(page 13) We strongly support the planned OSCR role on dissemination of good practice and advice; albeit to complement rather than supplant existing sources. This advice role should be a priority task for the incoming regulator and requires adequate resources.

(page 15) We support the proposal to establish OSCR as a non Ministerial Department. Although this does leave some residual dependency on and vulnerability to Executive policy, and in particular resourcing (e.g. on staffing levels and therefore early effectiveness), but we feel that safeguards in the Bill are adequate to ensure necessary independence. The alternatives of setting up OSCR as an Executive Agency or NDPB offer less clear independence. There are attractions in the Parliamentary Commission route but, as the consultation highlights, it does risk confusion with the single commissioner approach and the normal commission role of scrutiny of Executive practice.

There should be open advertising and recruitment of executive staff and non-executive board members. The recruitment panel could include independent non-ministerial representatives with relevant knowledge – for example, experts / academics versed in charity law or regulation.

(page 16) OSCR has to be independent of government. In the draft bill, the term of office of all the office holders, including the non executive board is left open. The terms of office should be specified, with the option of renewal. The total number of terms of office should also be limited to allow for change and maintenance of independence. To allow for some continuity there needs to be different lengths of time to the terms of office initially. The same criteria should be applied to the Appeals Panel.

4. Charity “stewards” (page 17)

In introducing a new term, there is a danger of causing more confusion. At present the terms “trustee” or “director” is well understood. There is also an issue for charities that work cross border, what term are they supposed to use? If “charity trustee” is to be used in England and Wales without any difficulty why not in Scotland? If words are kept linked – “charity trustee” for charity and “trustee” for financial body – then there is not a risk of confusion. The term “steward” is old fashioned, contrived and potentially confusing for public. It is not a term lay people or media are familiar with, except in context of trade unions, ships or public order.

5. Duties (Page 17/18)

We would accept the proposals in the consultation document and Bill. We agree that there is a need to set out trustees/ stewards responsibilities and accountability clearly.

The general principles are sound. However, many charity trustees /stewards may need support in undertaking their role and understanding what is the law and reporting requirements.

This would reinforce the point made above in section 3 on the need for adequate resourcing for OSCR to deliver on its advice and support role.

We would have welcomed more specification about the principles and minimum procedures for appointing trustees/ stewards/ board members.

6. Powers to deal with wrong-doing

We support the principle of enabling charities to have an accessible appeals process against OSCR decisions, in addition to the current method of challenging through the courts.

7. Regulation of charity fundraising

statutory regulation of fund-raising if self-regulation proves problematic. It is important that the charity sector is seen to be rigorous in developing good practice and in having effective regulation. Friends of the Earth Scotland would be supportive of the development of independent regulation of the charity sector as it is supportive of the development of independent regulation of other sectors, such as the corporate sector.

Under section 67(4) local authorities have to give consent 14 days prior to the date of the collection, and under section 68(9), consent has to be given within one month of notification. These two approaches are not necessarily consistent, and the latter is preferable. Local authorities should be required to give notice of whether consent is given within a set time from the date when the request was filed with them. This will also allow the right of appeal within 14 days of the decision under s69(4) to work in practise.

8. Operating Environment

Publication of address

This would be a problem with some charities, e.g. women's refuges. OSCRC should be given the power to withhold this information from public scrutiny, for those at risk charities.

Designated Religious Charity

Accounts format for these charities should be the same as for other organisations to allow for transparency and compatibility. There are recognised accounting standards and these should be applied to all. Within the current practice it is possible to not follow a particular accounting rule e.g. valuation of property, as long as it is disclosed within the accounts together with the reason for deviating.

Definition of small and medium size charity

The size test should be based on a combination of turnover, assets and employees. There might also be the need for an averaging over two or three years, so that any lump sum grant received in any one year does not distort the true picture.

Information required by OSCRC

Charities must not be overburdened by the demands for information from OSCRC. The majority of charities have limited resources and depend largely on volunteer support. Many already have to comply with grant funding reporting requirements. For those charities that operate in both Scotland and England, the reporting requirements for OSCRC and the Charity Commission should be dovetailed.

Scottish Charitable Incorporated Organisation option (page 31)

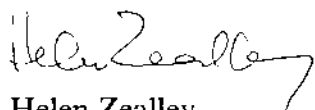
We are interested in the proposal and we would like to register an interest – preferably collectively with Scottish Environment LINK - in involvement in further consultation on proposed regulation

9. Transitional arrangements

No comment.

Thank you for the opportunity to respond to the consultation and we look forward to being involved in future consultations in relation to this legislation.

Yours sincerely



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Chair, Friends of the Earth Scotland



Duncan McLaren
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