

Draft Charities and Trustee Investment (Scotland) Bill

The following is a general response by the Association of Scottish Community Councils.

The ASCC is a membership organisation, and represents over half of the total number (1160) of community councils currently in existence.

Community Councils have not normally been eligible under the current criteria to access charitable status. The most common refusal by the Inland Revenue refers us to the statutory framework under which community councils are established, of the Local Government (Scotland) Act 1973, as amended by the Local Government etc (Scotland) Act 1994. The ASCC is not aware of any individual community councils which have charitable status.

In order to access funding for their communities that would enable them to take forward projects, a large number of community councils have established separate bodies, trusts etc with objects and aims compatible with charitable remits to satisfy the Inland Revenue. This has always been considered a duplication of voluntary resources, especially within small communities.

The ASCC therefore welcomes the main thrust of the consultation which would appear to offer such communities an opportunity to benefit from the proposed changes. We would also welcome an opportunity to be further involved on behalf of community councils generally, particularly if the proposals on the definition of charitable purposes is extended in respect of 'the advancement of civic responsibility or community development' which we believe could offer community councils the right to obtain charitable status.

As a voluntary organisation, the ASCC would almost certainly wish to consider whether it could directly benefit from this proposal and seek charitable status.

KEY ISSUES.

Q. Views on whether the interpretation of 'public benefit' should be left to the regulator, or provide broad criteria in the Bill etc.

We would strongly suggest that the legal definition of 'public benefit' be broadly defined within legislation, but with the Regulator being allowed scope to clarify as required, with of course the ultimate challenge being decided by the courts. Such criteria need not be prescriptive, but intended to enable and guide the Regulator.

We see the incorporation of criteria referring to charges, and their levels, as an area that is best left to the Regulator to decide on a case by case basis.

Q. Views on the form, appointments and functions of OSCR.

We agree with the rationale given for the Regulator to operate as a Non-Ministerial Department, and thus retain its independence. We see no particular difficulty over the appointment process suggested provided the involvement of Ministers is and must only be seen as requiring 'a light touch'. We would anticipate however, that members appointed to the Regulator would come from a wide and diverse background, but with an emphasis on charities, volunteering, law and accountancy.

We note that no consensus has been reached during previous discussions in respect of the Regulator operating both from a legislative, and advisory role, as was recommended by the McFadden Commission. However we recognise that a 'one-stop shop' principle has practical merit and would agree that while the two roles are distinct, there is no need to set such distinction in legislation.

Q. Views on the suggested term 'charity steward'.

We do have difficulty with the suggested use of 'charity stewards' as opposed to 'charity trustees'. As indicated in the consultation, the term 'charity trustee' is widely accepted by the general public and its meaning is explicit. We see no benefit from departing from such a widely accepted term, rather the opposite, and one which would end up being totally ignored by the general public. There would also be benefits in harmonising with English law in this respects and for the avoidance of confusion where similar bodies are operating in both Scotland and England.

Q. Views on the duties of 'charity stewards'.

We have no difficulty with the suggested duties. The use of special knowledge or expertise arising from an individual's business or profession, is reasonably expected to enhance the charity to which they have been invited to participate. They would be selected for, and expected to use such expertise.

Q. Views etc in relation to SCIO's

This appears to be an interesting and acceptable concept. If these can be established and maintained without the need for elaborate and costly company law structures, yet offer some form of limited or no, liability, we would welcome this proposal.

Depending on the suggested form of constitutions, and of further detail, the ASCC would at this stage be interested in being involved in further consultations.

Q. Other Issues.

s55 – 58 of the Bill refers to Charities and Public Trusts. Presumably these may be such as those held by Local Authorities. The ASCC and some members do have concerns that such small trusts, bequests and the like, have, and are not being properly administered as their donors so intended. Many are of limited value by current standards, but little or no attempt has been made to utilise these for their intended beneficiaries. Many are being left, apparently dormant, but could, with sufficient application, be made beneficially available as intended.

The ASCC would be concerned at any wholesale re-organisation of such trusts without due and adequate public consultations. We would prefer to have legislative endorsement to ensure that public authorities set in place adequate and constructive consultations, prior to any request to the Regulator or Courts, for proposed changes to constitutions or re-organisation or consolidation of such trusts or charities.

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