

Charities and Trustee Investment (Scotland) Act 2005

Proposals for Minor Amendments to the
Act and to the Charities Accounts
(Scotland) Regulations

Scottish Government Consultation
Analysis Report

Introduction

The Scottish Government would like to thank all the individuals and organisations who took the time to consider and respond to the consultation.

1. The Scottish Government issued the above consultation paper in April 2009. The paper was published on the internet and open to the general public, and distributed to a wide range of those interested in the charity sector. The consultation period closed at the end of July 2009. We received a total of 76 individual responses, copies of which are available on the Scottish Government website at

<http://www.scotland.gov.uk/Publications/2009/09/01135126/0>.

2. This report provides an analysis of those responses. As will be noted, not all respondents answered all questions and the number of responses for each question varies. The Scottish Government has considered the findings from the consultation and these have informed our decisions on how to take the various issues raised forward. A brief outline of next steps is provided after each question below.

Potential Changes to the Charities and Trustee Investment (Scotland) Act 2005

Question 1 Do you agree that allowing OSCR to appoint additional trustees, to approve changes when charities wish to add new unrelated provisions to their constitution, and to reorganise restricted funds will enable OSCR to assist charities without unintended consequences?

3. 47 respondents commented on this question. Of those 47, all but one agreed that OSCR should be able to appoint additional trustees, approve changes adding new unrelated provisions to their constitutions and reorganise restricted funds. A number highlighted that they agreed because OSCR would only be allowed to use these powers at the request of the charity. They also raised a number of other points, especially in relation to the appointment of trustees. It was suggested that OSCR appointed trustees should be appointed for a limited time period, and that existing trustees and other relevant parties should be consulted. A number of other detailed procedural points were also raised in relation to the appointment of trustees.

4. The respondent who did not agree with OSCR being given these powers felt that OSCR should not be able to appoint trustees, but did not comment on whether they should be able to approve new unrelated provisions to charity constitutions or reorganise restricted funds. They were concerned that allowing OSCR to appoint trustees would bring into question the independence of any trustees appointed this way. Instead they suggested that OSCR should work with others to facilitate the appointment of trustees.

Government response

5. We intend to amend the 2005 Act to implement these changes and have laid amendments to the Public Services Reform (Scotland) Bill 2009 to do so. In response to points raised in the consultation, OSCR appointed trustees will be appointed for a time limited period, and the amendment clarifies that they are required to undertake the same functions as all other charity trustees, including the duty of acting in the interests of the charity. In line with the existing reorganisation provisions, OSCR will only be able to approve the reorganisation of a restricted fund at a charity's request, as well as being able to apply to the Court of Session, either of their own volition or at the charity's request, to approve the reorganisation of a restricted fund.

Question 2 Do you agree the phrase “charitable purposes” in charity constitutions written before 2005 should be read as including a reference to charitable purposes as defined by the 2005 Act?

6. 43 respondents offered views on question 2. The overwhelming majority (40) agreed that the phrase “charitable purposes” in charity

constitutions written before 2005 should be read as including a reference to charitable purposes as defined by the 2005 Act.

7. A few of those in favour of this suggestion queried the impact on cross border charities, and the impact on tax status, which needed to be considered and resolved before the change was made.

8. The three responses against this proposal cited concerns around possible unintended consequences, primarily that the wording of this change might mean that charities met neither the Scottish nor the English and Welsh definition of charity. They suggested the use of the word 'including' means that the amended references would refer to all the charitable purposes under the Scottish definition and all the charitable purposes under the English and Welsh definition. This would create problems because the slight differences in the definitions of charity mean that there are purposes under the Scottish definition that are not charitable under the English and Welsh definition and vice versa. The value of the amendment was also questioned since it would not remove the need for charities to review their constitutions, and a couple of responses suggested that the Scottish definition should be changed to be the same as the tax definition.

Government response

9. We are not pursuing this proposal at present because of the complexities of making this change in legislation without creating any unintended consequences. We will continue to monitor the situation.

Question 3 Do you agree that requiring charities to state their name, charitable status and charity number on their websites will increase transparency? Can this be done without imposing significant costs on charities?

10. 47 respondents commented on this question. 45 were in favour of charities being required to state their name, charitable status and charity number on their websites. One respondent was against placing this requirement on charities, arguing that charities should be encouraged but not required to include this information. One respondent did not offer a view on whether they supported this suggestion, but indicated that if this change was made it was important that there was clarity about which web pages were captured by the requirements. This point was also made by a number of the respondents in favour of the change, who suggested that it may be appropriate to limit the requirement to certain pages, including the home page.

11. There was agreement that this requirement could be introduced without imposing significant costs on charities since many charities already provide this information on their website, and provided that sufficient lead in time was allowed so that charities could make any necessary changes as part of a general review or update of their website.

Government response

12. We intend to amend the 2005 Act to implement this change and have laid an amendment to the Public Services Reform (Scotland) Bill 2009 to do so. Regulations will specify which web pages are captured by the requirement (we anticipate this is likely to be only the home page and any fundraising pages), and a lead in time will be included, as it was with the implementation of the Charities References in Documents (Scotland) Regulations 2007.

Question 4 Do you agree OSCR should be allowed to vary the details of directions given under Section 30(1)(a) to require a charity to take such steps as it considers necessary for the purposes of meeting the charity test? If so, do you think this would be better achieved by: a) permitting OSCR to vary or revoke the direction; b) allowing the charity to request a review of the decision to give a direction; or c) both?

13. 43 respondents answered question 4. All were in favour of OSCR being allowed to vary the details of directions given under Section 30(1)(a) to require a charity to take such steps as it considers necessary for the purposes of meeting the charity test. 41 respondents felt that this would be best achieved by allowing both OSCR to vary or revoke the direction and the charity to request a review of the decision to give a direction. The other two respondents felt that OSCR should be able to vary or revoke the direction, but that the charity should not be able to request a review of the decision to give a direction, as this could be used by a charity to delay complying with a direction.

Government response

14. We intend to amend the 2005 Act to implement this change and have laid an amendment to the Public Services Reform (Scotland) Bill 2009 which allows OSCR to vary or revoke a direction made under section 30(1)(a) and allows the charity to request a review of the decision to give a direction.

Possible amendments to the Charities Accounts (Scotland) Regulations

Question 5 Do you agree that replacing “accounts collated into a single document” with “a single set of accounts” would allow connected charities greater freedom to meet the requirements of the regulations in the most convenient fashion?

15. 35 Respondents answered this question. Of these, 31 were broadly in favour, whilst four were broadly against. Two of those opposed were against this change on the basis of misunderstanding this regulation as being compulsory rather than permissive. One felt this would undermine the independence of smaller charities, and the last had concerns over whether or not this implied connected charities need produce a consolidated statement.

Government response

16. We propose to implement through amending the regulations in the near future.

Question 6 Do you agree that including a specific requirement for consolidated accounts to be audited will bring greater clarity?

17. 33 respondents answered this question. Of these, 30 were broadly in favour, whilst three were broadly opposed. One of those opposed saw no need for the amendment, whilst one felt that it would unnecessarily increase the burden on charities below the threshold. The remaining opponent suggested the original policy intention was to leave open the possibility that consolidated accounts need not be audited. They postulated a situation in which a charity owned a non-charitable company below the audit threshold. Requiring an audit of the consolidated accounts would also require an audit of the company's accounts, and this could not have been intended.

Government response

18. We propose to implement. Any additional burden imposed in the unusual circumstances outlined would be justified by the requirements of public accountability and transparency.

Question 7 Do you agree that this will make the definition of the asset threshold easier to understand and assess?

19. 36 respondents answered this question. All were broadly in favour. Respondents suggested the proposal could be further improved by:

- referring to the end of the charity's financial year (to avoid any implication of a specific date);
- referring to the end of the relevant financial period (to cover cases where the accounting period is not a calendar year); or
- by following the formulation used in the Companies Act.

20. One respondent pointed out that the asset threshold only applied to Regulation 8 (those required to prepare accrued accounts). It would be possible for a charity to have high value assets, but a low income, and thus not be caught by the asset threshold's requirement to be audited by an eligible auditor. They suggested this was inappropriate, and that Regulation 10(1)(b) should be amended to ensure charities preparing accounts under Regulation 9 with net assets of more than £2.8 million were also caught.

Government Response

21. We propose to implement, taking forward suggestions from respondents to ensure clarity here, and using the formulation “at the end of the charity’s relevant financial period”.

22. Although we tend to support the notion that any charity with significant assets should be professionally audited, for charities with low incomes this would represent a significant additional burden which would divert resources from charitable ends, and we would not propose to take this further change forward at this time.

Question 8 Do you agree that the proposed amendments set out in part 1B above are both helpful in either clarifying or updating the existing regulations, but that they will have only limited real world effect?

23. This question covered 6 minor changes. In total 38 respondents answered this question in relation to at least one of these changes. 20 were broadly in favour of all the changes proposed.

24. The first change relates to **the definition of gross income**. Many respondents raised problems with the current definition – but 10 respondents were against the proposed change. These divided between those who felt it wrong in principle to include endowment and capital resources received in any calculation of income, those who sought consistency with other relevant definitions such as those used for Trusts, and those who objected to the practical impact of the change in bringing some charities above the £100,000 income threshold for the preparation of accrued accounts. Many respondents drew our attention to various parallel definitions, including those for endowment income. From the responses, it is clear that there is an inconsistency in the interpretation and application of the term “income” – reflected for example in contrary views on whether or not the parallel thresholds in England and Wales include or exclude capital receipts and contributions to endowments.

Government response

25. Change is clearly needed here to bring clarity and consistency. We intend to implement a new definition to make clear that “gross income” should refer to any income received by a charity except for contributions to endowments.

26. The second and fifth change in this section concerned updating the references to the various relevant Statement of Recommended Practices. No respondent was against this in principle. Several felt it unfortunate that a formula could not be devised that would allow the regulations to automatically refer to the latest SORP versions without the need for future updating – and it

was suggested that Company Law might offer a model here. One respondent felt the 2008 Edition of the 2005 Charities SORP did not need to be referred to since it involved no material change, and two respondents suggested alternative ways of referring to it (“SORP 2005 (reprinted with revisions 2008)” and “2005 Edition (as amended in 2008)”).

Government response

27. Implement as proposed. We have explored the approach taken in the 2006 Companies Act to see if that offered a “self-updating” model we could copy, but our understanding is that it too relies on regulations to specify the relevant applicable SORP.

28. The third change in this section was the proposal to replace “sufficient” with “adequate”. No respondent reported problems with the existing wording, and most who commented felt this small change was unnecessary but harmless. If the change were made, one respondent suggested it would also be necessary to import the Company Law definition of adequate and one would have preferred an amendment to Section 44(1)(a) of the Act to replace “proper” with “adequate”.

Government response

29. Given the lack of reported problems with the current wording, we do not propose to pursue this further.

30. The fourth change proposed was to replace “consolidation” with “consolidated”, an error in the original regulations. All but one respondent agreed this was a necessary typographical correction.

Government response

31. Implement.

32. The sixth change proposed was repeal of Regulation 12 given that it no longer applied in practice. No respondent objected to this, though one suggested an alternative form of words for the saving provision in the draft Regulation 1(3) to copy that used in the Companies Act 2006 (SI 2008/674 Reg 2(2)) – “accounting periods which commenced prior to 1 April 2008”.

Government response

33. Implement, adopting the proposed new form of saving provision for the sake of consistency.

Question 9 **Are there other similar changes we should make, or are you aware of alternative approaches to tackling any of the issues raised in Part 1B?**

34. No alternative approaches were suggested. The following additional matters were raised:

- a request that all definitions should be harmonised with those used in England and Wales;
- a suggestion that OSCR should be given a power to issue directions to independent examiners as per Section 43(7)b of the 1993 Charities Act;
- a suggestion that the requirement for a qualified examiner should be removed for charities below the threshold who prepare SORP compliant accounts on a voluntary basis.

Government Response

35. We will take these points into account in subsequent development of charity regulation and in ongoing discussions with the Regulator. In November 2009, OSCR published guidance on independent examination, which is available on their website. The guidance is aimed at those undertaking independent examination for charities as well as charity trustees and other interested third parties.

Question 10 **Do you agree introducing a requirement for reporting on public benefit increases transparency without placing a significant additional burden on charities?**

36. 46 respondents answered this question. 28 were broadly in favour, whilst 11 were broadly against. Views were clearly strongly held and trenchantly put on both sides.

37. Those against fell into two main groups. The first felt this simply an unnecessary burden, which would be disproportionate for smaller charities. It was felt that self-reporting could not be relied upon, and that practice was likely to vary widely. The second argued that this kind of initiative was more a matter of best practice than of regulatory minimum standards, and should be promoted by education rather than statute.

38. Those in favour felt there would be a significant benefit to the charity sector overall in terms of safeguarding public confidence, and that such a requirement might help encourage trustees' focus on the public benefit they were delivering. They argued the burden of meeting such a requirement need not be great – suggestions ranged from “tick boxes” to notes to the accounts that once drafted could be rolled forward year to year.

39. In part the difference in views reflected a difference in interpretation of the possible new requirement. Some saw this having the potential for

charities to have to explain the rationale behind every grant – whilst others saw it as little more than a high level statement of how the charity met its aims. Many respondents stressed the need for clear guidance and examples of how the Regulator saw the requirement being met.

Government response

40. Although there seems consensus on the principle behind the proposal here, there is no agreement that regulation is necessary to deliver it. Given this, the Government considers it worth trying the best practice/education route to see if that can deliver a sufficient level of change without the need for regulation, and will discuss with OSCR how this can best be taken forward.

Question 11 Should the accounting thresholds be increased? If so, should they be increased to match the proposed thresholds in England and Wales?

41. 60 respondents answered this question. 8 were not in favour of any increase. 7 were in favour of an increase, but gave no view on what that should be. 9 were in favour of increasing in line with inflation. 30 were in favour of increasing the thresholds to match England and Wales. Ten respondents specifically commented that they did not see a case for an exemption for the smallest charities from any of the requirements, whilst two respondents argued for such an exemption. One respondent suggested a new threshold of £25,000 should be created, under which Receipts and Payment accounts need not be examined by an independent examiner.

42. Those opposed argued that increasing the thresholds would be seen as a diminution of regulatory control, and would undermine public confidence. They felt it was more cost-effective for charities not to have to consider changes, and one respondent felt there would be a lack of suitable independent examiners to undertake the higher volume of work.

43. Those in favour argued that fully accrued accounts imposed a significant cost burden on smaller charities, and that these accounts were less easy to understand for members and the public. It was argued that there was no relaxation in control in allowing more charities to use simpler accounts, since all accounts would still need to be submitted to and examined by the Regulator. Common thresholds would benefit not only the small number of cross-border charities, but also allow common training and guidance. Indeed, two respondents suggested harmonisation at the EU level was desirable!

Government response

44. We propose to raise the income threshold at which accruals accounts are required from the current £100,000 to £250,000, and to increase the asset threshold for full audit to £3,260,000, to come into effect for financial periods starting on or after 1st April 2011. We do not propose to change the

requirement that all charities should submit accounts and an annual report to OSCR.

Question 12 Do you consider there is a case for a less burdensome treatment for charities who breach the accounting threshold for one year only?

45. 48 respondents answered this question. 40 were broadly in favour, whilst 7 were broadly against.

46. Those against argued that it would be preferable to increase the threshold, that this problem would reoccur wherever the threshold was set and that the option would generate confusion and uncertainty over whether an individual charity would qualify.

47. Those who were in favour recognised the significant additional costs of preparing accrual accounts for the first time on smaller charities caused by, for example, the proverbial church roof appeal. There was a feeling that such an exemption should only be available when the breach of threshold was limited and was unlikely to occur – though several respondents also suggested it might be worthwhile covering multi-annual fundraising campaigns, or that a three year average might be appropriate for calculating the threshold. There was also concern over whether it was possible to devise a simple and transparent scheme to achieve this end. Several respondents suggested OSCR should be given a discretionary power to grant dispensation for special cases similar to that enjoyed by the Charity Commission for England and Wales.

Government response

48. The arguments that, whilst such an approach would be welcome in theory, in practice it would only deliver uncertainty and delay, in particular if coupled with a discretionary power for the Regulator for which there would need to be an application process, seem compelling. Our feeling is that the “hard cases” likely to arise here have been adequately addressed by the proposed increases to the thresholds outlined above. We do not propose to take this further.

Question 13 Are there any advantages to reducing the formal requirements on charities with no income, expenditure or assets from the accounting regulations? Is it right to do so?

49. 35 respondents answered this question. 22 were broadly in favour, whilst 10 were broadly against.

50. Those against felt that there remained a strong public interest in reporting on dormant charities, and that keeping the requirements provided an incentive to defunct bodies to wind up. One respondent felt bodies in this

position should lose their charitable status. Another felt such occurrences would be few and far between and best left alone. Introducing a new more general exemption for the very smallest charities might also end this problem.

51. Those in favour felt it important that such bodies explained their continued existence to the Regulator, and most felt this would best be achieved by maintaining the requirement to submit an Annual Report. In general those in favour thought there was no need to require anything further. One suggested that the dormant company model should be adopted, which requires the submission of a Trustees Annual Report and Statement of Financial Activities (or Receipts and Payments Account) for the first year only to provide previous year's figures, and a balance sheet to report assets and liabilities.

Government Response

52. We believe the underlying principle here in seeking to reduce unnecessary burdens on charities is right. However, we have been unable to find a clear regulatory solution here that would avoid all uncertainty over whether exemptions would apply in the circumstances of a particular charity without requiring a dialogue with the Regulator – which would undermine the intent of reducing compliance costs. Given the lack of consensus amongst respondents, we do not propose to take this forward at the current time.

Question 14 Do you consider there is a case for changing any of the other requirements for charities - or any subset of charities - to prepare, have scrutinised and submit annual accounts to OSCR?

53. 12 Respondents answered this question. The following points were raised:

- the need to simplify the current annual return form;
- a possible exemption for church congregations;
- the need for OSCR to focus more on local authority charitable trusts and public body charities;
- possible reductions in the requirements for the smallest charities, for example, ending the need for external examination for charities with an income of less than £10k;
- a suggestion that all charitable companies should be audited under both charity and company law; and
- a concern that the current requirements were making it hard for smaller charities to recruit trustees and treasurers.

Government Response

54. We will take these points into account in subsequent development of charity regulation and in ongoing discussions with the Regulator. OSCR's current "Integrated Reporting" project is addressing some of these issues, specifically in relation to the submission of OSCR's own annual and supplementary monitoring returns.

Question 15 What would the impact on public confidence in the charity sector be of any potential changes?

55. Thirty respondents answered this question. More than half felt none of the changes suggested in the consultation document would have any noticeable impact on public confidence. A majority of those who commented on the idea of a new class of very small charity with reduced reporting requirements felt this would have a harmful impact. There were divided views on the impact of increasing the threshold for fully accrued accounts. Several respondents felt this would be perceived as a reduction or "dumbing down" of regulatory control, and this might be harmful. Others argued that members of the charity found receipts and payments accounts easier to follow, and that allowing more charities to use this form would increase transparency and thus accountability. Most felt that the form of accounts was not important for public confidence – what mattered was that all charities had to submit these to the Regulator. Other comments included:

- the potential value of the Regulator making accounts and annual reports available on-line;
- the importance of the Regulator monitoring public confidence through annual surveys (as it does now);
- the existence of a wide range of other controls on charities beyond the accounting regulations; and
- a fear that public confidence might be weakened if changes in regulation meant more of a charity's resources needed to be spent on administration rather than for the benefit of good causes.

Government Response

56. We are grateful for the many valuable comments provided in response to this question. We would in particular want to underline that the Government has at this stage no plans to create a new category of "very small" charity which would not be subject to the Regulator's control.

Question 16 Do you have any views on how far changes would genuinely benefit charities, and whether these benefits would outweigh the disruptive effects of change?

57. 32 respondents answered this question – though most answered it with reference to different elements of the consultation, so that a numerical analysis of the responses is not appropriate. The general view was that the potential benefits were small, but that these outweighed the costs, and there was scope for significant benefit to a small number of charities. Respondents emphasised the importance of clarity and a suitable lead-in time as ways of minimising the costs. Only two respondents built on the argument set out in the paper that any change implies disruption and cost to suggest that the benefits of the changes suggested in the paper were too small to justify the costs of change.

58. Few respondents provided estimates of potential costs, although several said that continuing to prepare receipts and payments accounts as opposed to having to change to accrued accounts would result in a significant cost and time saving. Several suggested this would be of additional value to those charities who relied on volunteers, who might be “driven out” by more complex regulatory standards. One respondent felt that the Government should be aware of the potential loss of income to accountants and auditors from any increase in the number of charities allowed to prepare receipts and payments accounts.

Question 17 Do you agree with our conclusion that the issues covered in Part 3 should not be addressed in the 2009 Amendment Regulations?

59. 41 respondents answered this question. 34 broadly agreed, whilst five respondents broadly disagreed. Those who disagreed suggested that:

- all charities should be required to produce accrued accounts, with those below the threshold allowed to treat SORP as best practice;
- that we should synchronise the deadline for submission of charity accounts with England and Wales;
- that there should be a “smaller charity SORP”; and
- that we should find ways of reducing the burden on smaller charities, especially since members of the charity did not understand accounts in the current formats.

60. None of these suggestions received support from more than one or two respondents. Several of those who agreed expressed strong views about the need to avoid the creation of any third kind of charity accounts.

61. One respondent built on the changes to Regulation 6 discussed in the consultation paper to suggest additional requirements to require group and individual parent accounts to be combined in the same document; and that the

group TAR should apply the reporting requirements to all the undertakings including in the consolidation – ie that the group should be treated as a single entity. This would be consistent with company law. The same respondent pointed out a drafting error in the current regulations – Schedule 3, Part 1 (6)(c) reads “summarise the holdings of investments **and** market value” where it should read “at”. In the same schedule, Part 1 (6)(e) refers to both liabilities and contingent liabilities without offering definitions of the terms. The respondent asked whether it was fair to expect all those preparing R&P accounts to be aware of the distinction, and whether it was in fact necessary.

Government Response

62. There is no intention to create a third category of charity accounts. We will take forward the correction to Schedule 3, Part 1 (6)(c), and clarify (6)(e) by introducing clear definitions of liabilities and contingent liabilities.

Question 18 Do you agree that it is not appropriate for the Annual Report to be subject to audit/independent examination beyond assessment of its consistency with the financial statements? Is legislative change needed to address any real world issues caused by the existing regulations?

63. 39 respondents answered these questions. Only one respondent challenged the view expressed in the first. On legislative change, 28 respondents said no change was needed. 8 respondents, including the relevant professional bodies for accountants and auditors, argued for legislative change to provide certainty.

Government Response

64. We accept that we should always aim for certainty, and will take this forward if a suitable legislative opportunity arises. But we are reassured by respondents reporting that they were not encountering significant issues arising from the current text.

Question 19 Are there any other issues with the existing regulations you think we should address?

65. 12 respondents raised specific additional issues they felt the regulations should address, as follows:

- a request to simplify the requirements for receipts and payment accounts;
- a suggestion that OSCR should have a general power to exempt individual charities from one, some, or all of the requirements of the accounting regulations in exceptional circumstances;

- a request for clarification over the interpretation of Section 67 of the Act over the payment of trustees, particularly with regard to the payment of expenses;
- a suggestion that the regulations should refer not only to the SORP for Registered Social Landlords, but also to the RSL Accounting Requirements Order;
- two respondents suggested that OSCR should be given a power, similar to the one held by the Charity Commission, to make statutory directions for independent examiners to resolve uncertainty over the independent examiners' role;
- the reference in Regulation 10(2) to "section 25 of the Companies Act 1989" needs to be updated to refer to "section 1212 of the Companies Act 2006";
- a suggestion that Schedule 3 Part 2(d) be amended to require R&P accounts to disclose the amount of expenses paid by the charity to persons connected to the charity trustees, to be consistent with Schedule 3 Part 2 (e);
- a suggestion that the SORP was too complicated, and that OSCR should be given the power to produce a list of derogations and circumstances in which they might apply;
- two respondents suggested that all the thresholds in the regulations, which are currently expressed in terms of "below" a certain figure, should rather be expressed as "up to and including" – thus consistent with England and Wales' use of "exceed";
- in the new draft regulations, Regulation 9, inserted paragraph b, the date should be 22 Jan 2008 not 12 May 2005;
- a suggestion that the FRS17 form on liabilities might be required every three years rather than every year. There is a group of charities allowed to join a particular local government final salary pension scheme as associated members some years back. Cost of required form from scheme is £3k a year;
- a suggestion that the reporting format by local authorities should be standardised;
- a suggestion that Reg 11(2) be modified to include "provided that they are authorised by the relevant body to carry out an Independent Examination of Charity Accounts at the required level" – to take account of the fact that many professional bodies have classes of members (such as students or associates) not suitable to carry out IEs; and
- a suggestion that the description used for accrual accounts should be standardised throughout the regulations, in line with the English and Welsh regulations – that is, use "on an accruals basis" rather than "fully accrued".

Government Response

66. We are grateful for these comments and suggestions, which we will take forward in discussion with the Regulator and others as appropriate. We do not believe it would be right to include any of them in the current amendment regulations without further consultation (beyond correcting the

error in Regulation 9), so will look for a subsequent opportunity to take forward those that receive general support.

Question 20 Do you agree with our assessment that the changes included in the draft regulations will not have a significant impact on charities or any other party? Do you have any further information that could be helpful in producing a Regulatory Impact Assessment if any changes to the thresholds are taken forward?

67. 12 respondents answered this question. 11 were broadly in agreement. One suggested that the potential change to the definition of gross income, if not offset by an increase in thresholds, would require more charities to prepare fully accrued accounts and that this could be a significant impact. Similarly, if the clarification to regulation 6 on the audit requirement for consolidated accounts led to individual charities having to fund additional audit work, this could be a significant impact for them. The respondent felt that these extra costs were justified by the wider benefit to the sector in terms of supporting public confidence.

68. No additional information was provided for use in a regulatory impact assessment, though two respondents offered to carry out an assessment of any additional costs for their own organisation arising from the impact of any change in thresholds. In response to Question 11, one respondent said that the move to fully accrued accounts had increased the time necessary to produce the accounts from three weeks to thirteen, and increased the cost by £900 a year.

Government response

69. We are grateful to those who provided comments and information here. Given those responses, a full regulatory impact assessment does not appear necessary.

Other Issues raised by consultees

70. Respondents raised the following additional points:

- OSCR was seen as too ready to return accounts for “minor” infringements of the regulations, and should be given greater discretion;
- there was some concern about the standard of supervision and management by charity trustees, and the question was raised about whether there should be higher requirements for appointment, or publication of board minutes;
- there was too much reliance on the internet for communication with small charities, for example, as with this consultation. OSCR should take a more proactive role in ensuring small charities were kept up to date with developments;

- funders and lenders often required fully accrued accounts where the regulations would allow a charity to use Receipts and Payments: could this be addressed?
- many older charity constitutions contained a requirement for “audit”. This was often undefined, and prevented some charities making use of independent examination where the regulations would allow this as an alternative to a full, more expensive audit. Since redrafting constitutions often required expensive legal input, could statute make such references be interpreted as “external scrutiny”;
- to help trace the beneficiaries of legacies and other donations, it would be helpful if the Register could include charities’ previous names or incarnations, and if there could be a “register of mergers”; and
- on Reorganisation Schemes, it seemed odd that OSCR had to wait until an application summary had been publicly advertised before it could reject an application on the grounds that it failed to meet the Act’s requirements. Whilst OSCR’s rejection should be reviewable, it should save both sides time and money if OSCR could reject before advertisement.

Government response

71. We are grateful to those who provided comments and suggestions under this heading. Many were on issues not directly related to the current consultation, and we will take these forward in discussion with OSCR as appropriate.

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