

Communities Committee call for evidence on the Charities and Trustee Investment (Scotland) Bill

Response of the Scottish Council of Jewish Communities

The Scottish Council of Jewish Communities generally welcomes the intention of the Charities and Trustee Investment (Scotland) Bill. However we would urge that the draft Bill should be amended to provide clarification and reassurance on the following points.

The public benefit test

i) Our principal concerns relate to the public benefit test. We share the concern of other faith communities as to whether public benefit might in future come to be defined in solely material terms, thus excluding groups that only provide spiritual and moral benefit from charitable status. The definition proposed in the consultation paper specifically stated that: *'benefit need not be restricted to material benefit'* (p10) and we are disappointed that this has not been carried forward into the Bill.

ii) We are particularly concerned that the Bill decouples 'the advancement of religion' from 'public benefit' and strongly urge that the current presumption should remain in place. This would also remove the confusion which presently exists as to whether every congregation or community would have to prove public benefit on an individual basis, or whether it would be for a religion as a whole to prove public benefit, after which each congregation would be automatically recognised as meeting the requirement.

iii) It is our view that the members of many religious and ethnic minorities derive significant benefit from the provision of social activities (for example clubs for youth or the elderly, counseling and other welfare services) which cater to their religious and cultural needs from within their own community. In addition there is arguably a benefit to the entire public when private charity, whether financial or through voluntary service, provides what would otherwise be a charge on the public purse.

We are, therefore, very concerned at the view expressed recently by an MSP in the Public Petitions Committee that: *'We believe that when charities gather money in Scotland or Britain that money should be available to everyone'* and *'I am also very disturbed that [this] charity benefits only people from the Jewish religion and with a Jewish background. That is not charitable in any way.'* (Official Report 27th October 2004) A great many charities serve particular interest or community groups, and it is our view that the Bill should clarify the meaning of 'public' in the term 'public benefit' to confirm that sections of the public constitute the public. We suggest that the Scottish public do not expect charities raising money to alleviate heart disease to fund research into multiple sclerosis, nor to provide services for those in perfect health. Neither do they expect charities whose remit is to support elderly and infirm Muslims to fund Jewish youth groups. We would welcome a clear statement recognising that different charities operate for the benefit of different groups in society, and that this fulfils the Bill's requirement of 'public' benefit.

iv) We are familiar with the term 'disbenefit' in a business context, but fail to understand its application in the context of the Bill (section 2a(ii)). We do not regard it as helpful and recommend that its use should be reconsidered so as to ensure clarity.

Charities operating in both England and Scotland

i) Our concerns about the situation of charities that operate in both Scotland and England have not been fully alleviated despite the Bill's attempt at clarification. The reference to charities 'carry[ing] out activities in any office, shop or similar premises in Scotland' (section 14b(ii)) is very broad and likely to leave many charities in confusion. We are aware that many

cross-border charities hold meetings and consultations in such premises without using them for conducting fundraising activities, and there is no indication as to whether this would require them to register with OSCR in addition to the Charity Commission.

ii) We note and are concerned by the differences between the English and Scottish Bills with regard to religion. It is our view that radically different definitions of public benefit north and south of the border would lead to an inequitable and confusing situation, where, for example, an organisation might be defined as charitable in England but not in Scotland. This would give rise to numerous problems for a charity based in one jurisdiction and operating in the other. It is our view that the inclusion in the Bill of a broad definition of 'religion' (as the Joint Westminster Committee has recommended for the English Bill) would be helpful in this respect, as would a provision permitting reference to precedent and common law with regard to determining public benefit.

Charitable purposes

We would also welcome the introduction of an additional charitable purpose for 'the promotion of religious harmony, racial harmony and equality and diversity' similar to that recommended by the Joint Westminster Committee for the English Bill as we are concerned that this may not be covered under any of the existing 'heads'.

Summary

In conclusion, the Jewish Community generally welcomes the intention of the Charities and Trustee Investment (Scotland) Bill to '*ensure a robust, proportionate and transparent regulatory framework*' (Policy Memorandum) but does not feel confident that the Bill in its current form will be able to achieve this. We hope that these matters will be addressed during the Bill's passage to enable '*charities to operate effectively in a modern society*' (ibid).

Note: The Scottish Council of Jewish Communities is the representative body of all the Jewish communities in Scotland comprising Glasgow, Edinburgh, Aberdeen and Dundee as well as the more loosely linked groups of the Jewish Network of Argyll and the Highlands, and of students studying in Scottish Universities and Colleges.

In preparing this response we have consulted widely among members of the Scottish Jewish community, particularly those involved in the management of charitable organisations.