

**Establishing an Accurate Register of charities in Scotland  
Meeting the Charity Test  
Consents and Notifications**

**Response of the Scottish Council of Jewish Communities**

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.

The Council welcomes this opportunity to comment on the practical arrangements for implementing the Charities and Investment (Scotland) Act. We also commend the way in which these consultations have been carried out and in particular the quality of the documentation so as to make them accessible to a wide range of organisations and individuals.

**Establishing an Accurate Register**

**Are the steps listed in paragraph 9.1 above, the appropriate steps for OSCR to take in order to establish whether a charity is active and establish the necessary details to include in the Register?**

Yes.

**Are there any other steps (than those listed in paragraph 9.1) which it would be appropriate to take in order to establish whether a charity is active and establish the necessary details to include in the Register?**

No comment.

**Should OSCR publish a statement of those charities removed from the Register? If so, how often? Should it include reasons for removal? Alternatively should OSCR publish a more formal record of charities removed from the Register and if so what information should this contain?**

We recommend that OSCR should publish an annual list of charities that have been removed from the Register. We believe there will be a tendency for organisations and individuals to check the Register when they begin a relationship with a charity and then not to do so in subsequent years. In this respect the purpose of the registration of charities is no different from the

registration of doctors or teachers – namely to protect the public from the occasional rogue.

A published list of charities removed from the Register would facilitate the greater accessibility of up-to-date information. As in the case of registered professions, the list should include reasons for removal in order to safeguard trustees from public suspicion that they may have acted fraudulently when this is not the case.

We wish to raise the issue of charities that apply to OSCR for consent to dissolve or to wind up their activities. There may be occasions when this is done in an attempt to avoid being removed from the Register by OSCR and we suggest that OSCR should give consideration to some way in which the public can be made aware of OSCR's concerns. It may in some cases be appropriate for OSCR to refuse a charity consent to dissolve voluntarily in order that it can actively remove it from the Register or take action against a Trustee, and publish its reasons.

**Do you have any comments on any other aspect of the proposals set out in this consultation paper?**

No.

## Meeting the Charity Test

**What are your views on the proposed approach to considering tangible and intangible benefit (paragraph 6.1.2), and to giving greater weight to direct benefit over any indirect or ancillary benefit (paragraph 6.1.3) that may be provided?**

We agree that benefit may be provided in several different ways, but do not believe that it is any more or less beneficial as a result. We therefore suggest that it be stated that direct, indirect, ancillary, tangible and intangible benefits will be given equal weight in considering whether a charity meets the public benefit test.

We agree that many of the benefits of religion are intangible and are concerned that the lack of a presumption that benefit is being provided may encourage people antagonistic to religion to argue that 'intangible' is synonymous with 'non-existent' and to make a case against religious organisations gaining charitable status.

**The concept of 'disbenefit' (see paragraphs 6.3.9 to 6.3.11) reflects social circumstances and values and at present is primarily a philosophical and ethical concept rather than a conventional legal concept. It is likely that there are parallels to be drawn from areas such as medical ethics and this is an area where we are particularly interested to have comments on what should be included in OSCR guidance on what may constitute 'disbenefit'.**

The lack of any dictionary definition of 'disbenefit' is problematic, and we strongly urge that a working definition should be developed and publicised to enable OSCR to demonstrate that decisions are being made on an objective basis. As things stand we are concerned that disbenefit may be regarded as being in the eye of the beholder rather than satisfying clearly defined criteria, with the result that OSCR's decisions become open to question and criticism.

For example, whilst OSCR has stated that the intangible benefits provided by many religious organisations, for example those entirely occupied with prayer, will be regarded as benefits for the purposes of the public benefit test, it is not inconceivable that someone might put forward the case that religion is a disbenefit to society, and therefore that religious organisations should be denied charitable status.

The reassuring statements that OSCR has made on this subject would carry more conviction if there were to be an objective test for 'disbenefit'. If, as has been suggested, the intention is to act as if 'disbenefit' means 'harm' or 'detriment', we urge that this should be clearly stated in its guidance for charities.

We would point out that the relationship between 'disbenefit' and 'unduly restrictive conditions' is unclear in the document, and ask that this be clarified in the guidance.

**We are aware that it may not always be the beneficiary who pays for the services provided by a (prospective) charity. For example where a local authority may pay for the cost of accommodation or for care costs on behalf of an individual, or a close relative may pay on behalf of the beneficiary. We would welcome your views on whether, in deciding whether charges or fees are unduly restrictive (see 6.4), we should take into account who would usually pay the fees, or whether we should only relate these to the circumstances of the actual beneficiary?**

**We would also welcome your views on how relevant is the particular route of access to sources of alternative funding (see 6.4) for the fees in determining whether charges are unduly restrictive.**

We do not believe it to be relevant whether an individual pays the charges and fees him/herself or whether they are paid by another person or organisation. The point at issue should be whether individuals are able to obtain access to the benefit, not the route by which they obtain it.

If a Trust exists to pay fees for less-well-off to attend a school or be treated at a hospital, it would be illogical to suggest that the former might be a charity and the latter not. It should also be noted that were that the case, the school or hospital would not have the financial benefits of being a charity, so the costs to the Trust would be increased, resulting in it being able to assist fewer people. That would be perverse.

**We would welcome views on how OSCR should consider the equal opportunities requirements of the various anti-discrimination legislation (or any other legislation) in relation to any restrictive conditions that may exist on obtaining benefit from a specific charity (see paragraphs 6.4.8 to 6.4.12).**

In our view OSCR should certainly have regard for anti-discrimination and other legislation in relation to restrictive conditions. However, we would emphasise that this should not be interpreted as meaning that the benefits from every charity must be open to everyone. It is entirely reasonable for individual charities to benefit people in, for example, either the Jewish, Muslim, Polish or Pakistani community, or those suffering from a particular illness or medical condition.

So, for example, a charity providing care services to elderly Chinese people is not discriminatory, but a charity providing care services to all elderly people except those in the Chinese community is.

**Do you agree that OSCR should request a statement of activity (see 7.1) and any supporting documentation in order to assess the (intended) activities of a (prospective) charity?**

We do agree that charities should provide a statement of activity and suggest that existing charities, especially SCIOs, should include this in their formal Annual Report. Prospective charities which have not yet made an Annual Report should provide a free-standing statement of their intended activity.

**If not, on what other basis do you suggest OSCR should assess whether public benefit is provided or intended to be provided (in the case of an applicant)?**

n/a

**Do you agree with the proposed approach of OSCR requesting a statement in relation to possible restrictions or conditions on obtaining the benefit from the charity (paragraph 7.1.3)? If not, what alternative approach do you suggest?**

We agree with this proposal provided that charities are afforded adequate opportunity to explain why any restrictions or conditions on obtaining benefit are reasonable – a wider test than “unduly restrictive”.

**We would welcome your views on whether asking for identity information, charity trustee declaration and spot-checks are reasonable and adequate requirements and measures on first registration. (see 9.2)**

We believe that a balance needs to be struck between OSCR ensuring that charity trustees are who they claim to be and potential trustees choosing not to take up positions due to the onerous demands made on them and on their time. We emphasise that any process for checking identities should be convenient for the individuals and require trustees to show only a limited number of pieces of commonly-held documentation. (We make this point because of the unreasonable requirements of the CRBS).

**We would welcome views on how OSCR may best be assured of the identity of prospective charity trustees. (paragraphs 9.2.3 and 9.2.4)**

To avoid duplication, and to make best use of OSCR's limited time, we suggest that signatories (whose identity will already have been proved to the satisfaction of the bank) should only have to demonstrate to OSCR that this is the case.

**We would welcome views on whether OSCR should require a Disclosure Scotland certificate from every prospective charity trustee, whether this should only be required in relation to specific types of charities, or whether OSCR should not require this at all. (paragraph 9.2.6)**

We are strongly of the opinion that Disclosure Scotland certificates should only be required from trustees of children's charities, or those dealing with vulnerable adults in line with the provisions of Schedule 2 of PoC(S)A and the expected PoVA(S) legislation. (This requirement is necessary due to the possibility that trustees could make use of their position to gain access to clients, but is not relevant to trustees of charities working in other areas.)

**We would welcome views on how OSCR should approach the rolling review programme and in particular on how we should prioritise the selection. (see 12.1)**

We recommend that the rolling review should prioritise the largest charities, particularly those collecting public funds.

**In Section 9.4 'Information in relation to prospective charity trustees', we propose that OSCR requests certain information in relation to the identity and possible disqualifications of prospective charity trustees. We do not propose OSCR keep such information or carry out checks on new charity trustees after the point of registration. However, the rolling review process could provide an opportunity for checking the status of current charity trustees, in particular in relation to any disqualifications. We would welcome your views on whether the rolling review process should include a check on current charity trustees, similar to that suggested for new charity trustees.**

It would, in our view, be reasonable for current trustees to be asked to provide this information as part of the rolling review. This would avoid a two-tier situation in which some charities are 'better Registered' than others, and which could potentially be exploited by the unscrupulous.

We appreciate that there are practical concerns about maintaining a Register of Trustees but believe this would make a significant contribution to minimising the risk of fraudulent activity on the part of a minority of trustees and thus provide an important safeguard for charities and for the general public.

**We would we welcome views on what you consider to be a reasonable cycle for the rolling review process, that strikes a balance between the burden on charities, the protection of the public and the charitable sector and the most appropriate use of OSCR resources (see 12.4). For example, should it be every 5 years, 10 years, 15 years? And should there be any differentiation in the frequency of review according to the size or type of charity?**

We suggest that a review period of three to five years would be appropriate for very large public charities and a period of ten to fifteen years for very small private Trusts.

## **Consents and Notifications**

**Are there other circumstances (than those described in paragraph 3.4.9) in which OSCR should consider a charity name to be offensive?**

No.

**Should more detailed guidance (than that given in section 3.4) be developed at this stage on what may be considered objectionable names, or is the general guidance above sufficient?**

In our view the general guidance is sufficient, provided it is clear that the list is not exclusive and it remains open to OSCR to veto proposals which fall outside the letter of the guidance on grounds of good taste. The charity should, of course, have a right of appeal.

**Do you agree that OSCR should be assured that the proposed action for which consent is sought under section 16 is in the interest of the charity?**

In general we believe that a charity will be the best judge of its own interest, and, provided that the proposed action is legal we do not believe that OSCR should question it.

**Do you agree with a general approach to section 16 consents based around the 'reorganisation conditions' of section 42(2), but recognising there may be other acceptable reasons for change?**

Yes.

**Do you agree that the remaining assets of a charity that is winding up should be transferred to a charity with similar purposes, but that in the cases of very small charities this requirement should be relaxed? What do you think should be considered 'very small' in this context?**

We are unclear as to how this requirement would be relaxed. We do believe that there should be a requirement that remaining assets, however small, should be applied for charitable use. It may, however, be perverse to require it to expend those assets on searching for an analogous charity and we therefore recommend that very small charities should be permitted to transfer the assets to any other charity approved by the trustees.

**We would welcome views on whether OSCR should require charities that wish to amalgamate or wind up to publicise this intention, either generally or to a particular group of individuals or organisations.**

This would, in our view, be a sensible provision, but the level of publicity should reflect the size of the charities concerned. Small local charities should not face onerous conditions, and we suggest that an announcement in the local newspaper or a notice in the library/post office may be sufficient in such cases.

**Are there any other matters (apart from those described in 5.3) OSCR should consider when giving or refusing consent (under section 16) to a change in a charity's constitution in relation to its purposes?**

In our view, the only other issue to which OSCR should give consideration when giving or refusing consent is whether the intention of the trustees is fraudulent. (This would be in line with consent procedure for an individual to change his/her name.)

**Are there any other matters (apart from those described in 6.3) OSCR should consider when giving or refusing consent (under section 16) to an amalgamation or winding up?**

As in our previous answer, only if the intention behind the amalgamation or winding up is fraudulent.

**What are your views on the proposed operation of the power to issue a direction under section 16(6) (see 6.4) in the context of allowing OSCR sufficient time to make complex decisions on amalgamation and winding up?**

We do not have a view.