

## Monitoring of cross-border charities

### Response of the Scottish Council of Jewish Communities

The Scottish Council of Jewish Communities welcomes the opportunity to comment on OSCR's proposals for monitoring cross-border charities, and supports the strategic objective to "*reduce the burden of regulation on charities wherever possible*". However, we are concerned that the proposed monitoring regime for some cross-border charities is confusing and unduly onerous, and that this may reduce compliance particularly among smaller charities.

#### **Definition and scope**

We are concerned that that consultation document does not include a clear definition of the scope of the proposed arrangements. "*Cross border [sic] charities operate as charities in more than one jurisdiction*" (p.3) is inadequate without a clear definition of what it is to "operate".

OSCR has taken a very wide view of its remit, and claims the right to regulate UK based charities which use no premises of their own but undertake such activities as attending meetings, visiting organisations or disbursing benefits in Scotland. We are aware that English lawyers have been advising English and UK charities, on the basis of the statute (particularly clause 14(b)), that they have no obligation to register in Scotland if they operate in Scotland only in that way; OSCR's advice is the opposite. In particular we are concerned that the extension in OSCR's published "*Guidance on Registration with the Office of the Scottish Charity Regulator (OSCR) for England and Wales charities*" to "*homeworkers*" who merely "*visit other organisations in their offices*" together with the statement that "*the business which determines the primary purposes of the premises does not need to relate specifically to the business or activities of your organisation*" (which includes the use of a room in a hotel) clearly go beyond the intention of the legislation, and could not be understood from a simple reading of the words of the Act.

This leaves many small, and particularly volunteer-led, organisations unaware that they are affected by these proposals. To make matters worse, OSCR's published Guidance does not contain clear criteria, but a list of "*questions ... you will need to ask yourself*" (4.2), followed by an indication of what "*might*" or "*probably*" or "*could*" be the case.

Partly in consequence, we are concerned that many organisations that have acquired new obligations as a result of these provisions have not been made aware of either their obligations or this consultation. This is borne out by the implausibly small numbers quoted for small cross-border charities. The tables on pp.16-17 indicate that there are only 12 such bodies with an income of less than £5000. We believe that to be implausible simply because we believe we could identify almost that number within the Jewish community alone. The small number quoted is therefore not a measure of the size of this sector, but of the failure of OSCR to communicate effectively with the sector.

### **Communication with those affected**

As part of their proposals, OSCR needs to clarify what makes charities subject to Scottish regulation, and explain how they propose to disseminate this information to UK charities which reasonably believe themselves to be exempt.

For the reasons stated earlier, we believe that the actual number of cross-border charities is likely to be significantly higher than the 452 currently registered with OSCR. In our experience cross-border charities may be unaware that they are required to register with OSCR in addition to the Charity Commission – for example, we recently learned of one large and one medium-sized Jewish communal charities operating throughout the United Kingdom that had not done so, despite having taken legal advice. Both were aware of the new Scottish legislation, but informed us that their (England-based) lawyers had advised it was not necessary to register. We supplied them with relevant information, and as a result one has now registered, and we understand that the other is in the process of preparing an application.

Compared with these, it is even more unlikely that very small cross-border charities will be aware of the requirement to register with OSCR since this may depend on whether or not volunteers happen to see a relevant media report. That likelihood is increased also by OSCR's own finding that as many as 44% of charities may have no access to the internet [*Scottish Charities 2008*, p.5]. It therefore seems probable that the actual number of cross-border charities is higher current figures suggest, and that a considerable number of these "missing" charities will be small.

We note that the Return will include "*an extended declaration ... where charity trustees are asked to positively confirm that they have read and understood their responsibilities in respect of the 2005 Act*". However, the Return can necessarily only be issued to those charities whose trustees are already aware of the requirement to register with OSCR, and we therefore urge particular consideration of effective means of awareness raising. This will be most important among those cross-border charities that are too small to be required to register with the Charity Commission, and which are therefore less likely to have received the relevant information.

Furthermore, even if an organisation is aware of the Act and OSCR's guidance, but takes the view that, for example since it only holds "*conferences on a one-off or irregular basis in Scotland this would probably not be considered as carrying out significant activities here*", the only way to ensure that it is not inadvertently in breach of the regulations would be to apply to OSCR. That is perverse, since the only way for an organisation to protect itself from the charge that it was not in fact exempt is for it to undertake exactly the process from which it believes itself to be exempt. It is also clearly unduly burdensome on small voluntary organisations.

It appears perverse that the Act should have the effect of criminalising those who through no fault of their own have not been made aware of its provisions, and we therefore strongly urge that OSCR arrange with not only the Charity Commissioners but also – for small charities that are not required to register with them – HM Customs and Revenue to communicate the new requirements.

### **Inconsistency of requirements**

We are concerned that the differences in registration and reporting requirements north and south of the border may cause confusion resulting in inadvertent non-compliance. Furthermore, the more stringent requirements north of the border will bear disproportionately heavily on the smallest charities, which are not required, for example, to file annual accounts for their principal activities in England and Wales, but may be required to do so as a result of merely incidental activities in Scotland. This is clearly a disproportionately onerous requirement, and may even have the unintended and perverse consequence that some small charities will discontinue what little activity they have in Scotland.

We therefore urge OSCR and the Charity Commission to negotiate uniform registration and reporting requirements for cross-border charities, particularly to align the income bands, and if that is not possible within current legislation, to enter into discussion with Scottish and UK Ministers at the earliest opportunity, with a view to introducing secondary legislation to simplify the regime.

### **Summary**

While we welcome the aims of the 2005 Act, we remain concerned that the consequences of OSCR's interpretation are disproportionately onerous on very small volunteer-led charities, which cannot reasonably be expected to be aware of that interpretation, and therefore will find themselves in default by default. OSCR must address this jointly with the other UK charity regulators to ensure both uniformity and proportionality and the adequate dissemination of their requirements. In particular examples and probabilities must be replaced by criteria and certainly.

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Note: The Scottish Council of Jewish Communities (SCoJeC) 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. SCoJeC is Scottish Charity SC029438, and its aims are to advance public understanding about the Jewish religion, culture and community. It works with others to promote good relations and understanding among community groups and to promote equality, and represents the Jewish community in Scotland to government and other statutory and official bodies on matters affecting the Jewish community.

In preparing this response we have consulted widely among members of the Scottish Jewish community.