

Draft Charities and Trustee Investments (Scotland) Bill

Consultation



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Consultation Paper

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Draft Charities and
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Foreword

Scotland's charities play a key part in providing public benefit and public good for the people of Scotland. Charities deliver effective, user-focussed services. They help cement our local communities by providing a wealth of opportunities for people to engage together in civic society. They create jobs and skills.



The Scottish public provides enormous support for charity activity, with around a million individuals volunteering for charities, and an estimated £240 million donated to Scottish charities by the public each year. The public deserves to be sure that charities in Scotland are effective, transparent and trustworthy.

I know that for charities to grow and flourish in Scotland, they need a modern, proportionate regulatory framework. Charities need public confidence in their work if they are to achieve their full potential, but they also need a regulatory environment that supports them rather than tying them in red tape.

In September last year I announced that, after listening to the sector and other stakeholders, I was committed to publishing a draft Bill to provide that regulatory framework. I also made a commitment that the sector would be fully involved in the preparation of the draft Bill, and consulted on publication of the draft.

I would like to thank all those people involved with the sector who have provided assistance and comments during our preparation of this formal consultation.

The draft Bill published here is motivated by my belief that there is a clear public interest in the effective regulation of charities in Scotland. I am absolutely committed to ensuring that the sector's needs are heard as we work towards introducing the Bill to Parliament. I am committed to ensuring we listen to all important stakeholders – that we promote the public interest in the regulation of charities, that we listen to the professions advising the sector, that we listen to staff and volunteers in charities themselves.

I believe that this draft Bill clearly sets out a comprehensive, consistent and effective regulatory system for charities in Scotland. It will modernise and simplify the framework within which they work.

I hope you will agree, and I particularly hope that you will respond to these proposals to help us get charity regulation right.

A handwritten signature in black ink that reads "Margaret Curran". The signature is written in a cursive, flowing style.

MARGARET CURRAN
Minister for Communities

1. Introduction and how to respond

Last May, the Executive published *A Partnership for a Better Scotland*. This sets out our vision for the future and specific plans for the next four years. A number of commitments focused on supporting the voluntary sector, and those who work or volunteer in the sector, to improve our quality of life. Having listened to the needs of the sector, we made a specific commitment to legislate to reform charity law.

We are publishing a draft Bill in this first year after the election as a step towards fulfilling the commitment made in *A Partnership for a Better Scotland*.

This paper and the attached draft Charities and Trustee Investment (Scotland) Bill show how we plan to improve and strengthen the regulation of charities operating in Scotland in a way that builds on the value that charities bring to Scottish society, and recognises their independence from government. The draft Regulatory Impact Assessment (pp. 34-49 of this document) sets out what we think the impact of our proposals on charities will be.

This consultation is your opportunity to have your say about these plans before the Bill is introduced into the Scottish Parliament. Although we have not posed specific questions, your views on any aspect of the proposals within this document, or on the detail of the draft Bill itself, are welcome. We would be grateful if you could clearly indicate in your response which parts of the consultation paper or draft Bill you are responding to as this will aid our analysis of the responses received.

This consultation paper aims to summarise the key policy debates which arose during the drafting process, and sets out our reasons for suggesting particular options. It does not explain in detail the full contents of the Bill. Please refer to the draft Bill itself for a complete picture of the technical detail we are proposing.

You are invited to respond in writing to:

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Please reply by **25 August 2004**.

This consultation, and all other Scottish Executive consultation exercises, can be viewed online at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Executive now has an email alert system for SE consultations (SEconsult at <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new SE consultations (including web links). **SEconsult** complements, but in no way replaces SE distribution lists, and is designed to allow stakeholders to keep up to date with all SE consultations activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Access to consultation responses

We will make all responses available to the public in the Scottish Executive Library by 24 September 2004, and on the Scottish Executive consultation web pages, unless confidentiality is requested. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library or placed on the website.

2. A vision of a flourishing charities sector

Valuing the sector

Scotland's 20,000 charities play a vital role in daily life in Scotland. Without charities' knowledge, skill and expertise, Scotland would be much the poorer. The Scottish Executive is committed to supporting and valuing charities and the wider voluntary sector, while respecting the independence of these organisations.

Scotland deserves a properly regulated and supported charity sector. We established the Scottish Charity Law Review Commission (the McFadden Commission) in 2000 to consider reforms to charity regulation, and we are very grateful to the Commissioners for their important report. We responded to the commission's recommendations in December 2002, agreeing to take them forward, although legislative time was not available at that point.

We now have an opportunity to legislate for 21st century charities, and have moved with all possible speed to prepare a draft Bill for consultation. The changes in charity regulation that we are putting in place here are designed to support and encourage charitable activity in Scotland, while reassuring the public that their money is being well used and that support is being properly provided.

The reform of charity law proposed in this consultation paper and draft Bill forms a core part of a wide-ranging programme of activity to support the sustainable growth of charities and the wider voluntary sector in Scotland.

The Office of the Scottish Charities Regulator (OSCR) has been established to monitor and supervise charities in the run-up to the legal reforms set out in this paper. OSCR is already working to a challenging remit of developing an effective regulatory system for charities, and managing a smooth transition towards the new legal framework to be set out by this Bill, having been closely involved in the development of the draft. An initial index of Scottish charities is now freely available on its website (www.oscr.org.uk). It is working closely with other regulators to ensure that the systems and procedures it sets in place follow best practice in regulation and minimise the burden on charities. It is developing a pilot monitoring framework to explore how to establish a proportionate and transparent reporting regime, which will pave the way for the requirements of this draft Bill. Importantly, it has already established a range of consultative structures to ensure that stakeholders and experts are able to contribute to the development of policies and processes now and in the future.

The Compact between the Scottish Executive and the voluntary sector has been revised and strengthened, and was relaunched in February 2004. At the same time, the recommendations of the Scottish Executive's Review of Policies to Promote the Social Economy are being taken forward and our proposals for further investment in the social economy will be published shortly.

The Strategic Review of Voluntary Sector Funding has brought the Scottish Executive, local government and the voluntary sector together in a jointly-owned process to improve the sustainability and effectiveness of voluntary organisations and the funding they receive. An action plan will be published to take forward this work later this year.

A Volunteering Strategy for Scotland was published in May 2004. The recommendations attached to this strategy, which include the development of the new Project Scotland youth volunteering programme, will be taken forward throughout this year and beyond.

Taken together, this wide range of inter-related activities, engaging a large number of stakeholders, creates a rolling agenda for change which will significantly improve the landscape for charities and voluntary organisations in Scotland.

Consulting stakeholders

Our aim in reforming charity law is to provide a robust, effective and proportionate regulatory system for Scottish charities, which will secure the widespread support and confidence of both the public and the charities sector. To ensure that the draft Bill is properly grounded in an understanding of the sector, we developed a three-stage consultation strategy, which was published in December 2003.

A reference group was established with a remit to assist the Scottish Executive to develop effective, coherent and proportionate proposals in the draft Bill. More technical or specialist details have also been considered in discussion with identified experts. These discussions have run in parallel to, and fed into, meetings of the reference group. The Bill team has now held more than 40 consultation meetings on particular aspects of the Bill.

We are committed to keeping the sector informed of our progress as well as making sure we have avenues to listen to concerns. We have created a website which provides access to a range of background information as well as to consultation documents, and we are working with sector publications and specialist media to ensure that stakeholders are aware of our plans and their likely impact.

More background on the drafting process and current consultation activities and events can be found at www.scotland.gov.uk/viu.

A vision for charity regulation

The draft Bill is motivated by the Executive's belief that there is a clear public interest in the effective regulation of charities in Scotland. For regulation to be effective, it must promote five key principles.¹ It must be:

- independent
- proportionate
- accountable
- transparent
- consistent.

The attached Bill is a wide-ranging piece of legislation, bringing Scots charity law requirements together in one place for the first time. It repeals existing charity law and creates one single, modern framework for charity regulation in Scotland based on the five principles above. The new Bill sets out a Scottish definition of charity, with a public benefit requirement. It provides for OSCR to become an independent statutory regulator with an enhanced range of powers, including granting charitable status and maintaining a statutory register of all charities operating in Scotland. We will seek to ensure that the five key principles of good regulation are enshrined in OSCR's operations.

The Bill modernises regulation of fundraising to ensure that public collections are more effectively monitored and that professional fundraising companies inform the public how much of a donation will go to charity.

The Bill also takes forward a number of measures which have been called for by charities for some time, including the creation of the new Charitable Incorporated Organisation, making charity re-organisation easier, and widening trustees' investment powers.

This draft Bill creates a specific Scottish regime of charity regulation which recognises the needs of the Scottish charity sector, and the public interest in effective regulation. However, where it makes good sense for our measures to fit with the approach being taken in England and Wales, we have sought to ensure our proposals complement theirs.

In some areas of the law reform, it is particularly helpful that the Home Office are looking at similar issues in a similar way. For example, since the definition of charity in law has implications for an organisation's tax status, it is clearly important that our definitions are similar north and south of the border. (For more about this issue, look at p. 9).

For more details of Home Office plans and a copy of their draft charities Bill, published in May, visit their website at www.homeoffice.gov.uk/comrace/active/charitylaw/index.html.

Some of the issues included in our Bill are highly technical. Some cover broad issues of principle, about how we want charities to behave in modern Scotland. For example, there is a debate about whether some types of organisations should continue to have charitable status. We have also listened to debates about whether charities should have to prove that they are independent of government. We welcome these debates, which raise a number of interesting questions for charities' place in Scottish society.

The approach we have taken in drafting our Bill is to set out key principles for the regulation of charities, which can be interpreted flexibly and proportionately by the regulator over time. 'Proportionality' as a principle of regulation does not mean that some charities will be dealt with more harshly than others, or that some will be able to evade the law we set out here. It does mean that different types or sizes of charity will be expected to provide proof of compliance in different ways suited to their circumstances, and will be given appropriate support from the regulator to do so. We will give the regulator, and the charities sector, more details of the system we envisage, by setting out the building blocks of proportionality in a range of secondary legislation. We will set thresholds in secondary legislation, to ensure that charities with lower incomes are subject to less stringent information requirements than, say, multi-million pound charities. We will consult on much of this nearer the time when the Bill will become law.

Meanwhile, responding to this consultation gives you the opportunity to help shape our vision for the Scottish charity sector.

We will take all views into account as we hone the draft Bill over the coming months. However, as we prepare to introduce the Bill to the Scottish Parliament, we are committed to make decisions based on the principles set out above, to ensure that the regulatory structure we create is effective and fit for purpose.

3. Key issues for the reform of Scottish charity law – A summary of our thinking and proposals in the draft Bill

This paper aims to summarise the debates and the policy options which we took into account while drafting the Charities and Trustee Investment (Scotland) Bill. It sets out the options and identifies the route chosen, and the reasons why. The consultation paper can be read as a stand-alone document, setting out the key elements of the Bill, or it can be read as an accompaniment to the Bill. The numbers beside the headings in this part of the paper (**s numbers**) refer to Bill sections.

We welcome your views on the chosen approach set out here, and on the detailed wording of the draft Bill.

1. Definition of charity (s7-8)

What makes an organisation charitable in law? The current definition of charity is drawn from the preamble of the Statute of Charitable Uses 1601. Over the years this has been refined and modernised by case law and decisions of the Charity Commission for England and Wales. To be regarded as charitable within the UK, an organisation must currently fulfil two conditions: it must have purposes that are recognised as exclusively charitable and it must be established for public benefit. This definition currently applies in Scotland through decisions of the Inland Revenue, which recognises organisations as charitable for tax purposes. Charitable purposes are characterised by the courts as falling under four categories or 'heads':

- relief of poverty
- advancement of education
- advancement of religion
- other purposes beneficial to the community.

There has been a presumption that bodies falling under the first three heads provide a public benefit, while those coming under the fourth have to prove this.

The McFadden Commission recommended that a new charity law should be prepared in Scotland. They set out the principles this legislation should establish, which would align the tests for qualifying as a charity more clearly with modern thinking. They recommended that a Scottish charity should be an organisation:

- whose overriding purpose is for the public benefit
- which is non-profit distributing

-
- which is independent
 - which is non-party political.

The non-profit distributing, non-party political nature of charities is not called into question and will be protected by our Bill. There have been interesting debates on the remaining McFadden-proposed principles. These, and our proposed way forward, are set out below.

Charitable purposes (s7)

The definition and regulation of charities is a devolved matter, and it is important that the way we define charity in our Bill fits the Scottish context and makes sense to the Scottish public. However, the definition of charity is very important because it links to the tax reliefs which charities receive from the Inland Revenue. As a UK department, the Inland Revenue is obliged to follow the same definition for tax purposes across the UK. For this reason, to avoid a dislocation where different definitions of charity north and south of the border lead to differing access to UK tax reliefs, we have decided that it is valuable to define charity in a way that is compatible with the Home Office's proposals, published in May 2004.

This definition sets out 13 'charitable purposes' and a second stage 'public benefit test':

- the prevention or relief of poverty
- the advancement of education
- the advancement of religion
- the advancement of health
- the advancement of civic responsibility or community development
- the advancement of the arts, heritage, culture or science
- the advancement of amateur sport
- the advancement of human rights, conflict resolution or reconciliation
- the advancement of environmental protection or improvement
- the provision of accommodation to those who need it by reason of age, ill-health, disability, financial hardship or other disadvantage
- the provision of care to the aged, people with a disability, young people or children
- the advancement of animal welfare
- any other purpose intended to provide community benefit.

In future any organisation wishing to qualify for charitable status will have to show, first, that its purposes fall within one or more of the categories in the new list and, second, that it will provide public benefit. It will no longer be the case that some causes are automatically presumed to be charitable.

We recognise that, with two different parliamentary processes for the Home Office Bill and our Bill, it is not possible to predict whether the legal definition of

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charity will in the end be exactly compatible north and south of the border. Equally, with two different charity regulators interpreting the definition, it is possible that decisions on charity status may diverge over time. However, we feel that the UK-wide tax reliefs for all charities, and the operating requirements of cross-border charities in Scotland, are important enough for us to seek to keep the definition of charity as similar as we can on both sides of the border.

Public benefit (s7-8)

The concept of ‘public benefit’ is an important one for charities. Most people would agree that charities should not simply be set up (and gain tax advantages) to benefit a single person, or a small family group. The general understanding of charity in our society is that we award special status to organisations which provide a wider benefit back to society, or which look after particular disadvantaged groups. Public benefit is already an established principle in charity law, and we want to build on this concept in defining charity.

The draft bill sets out a new ‘two-stage’ test for organisations seeking to become charities. For the first time, all applicants for charity status will be required to show that they provide public benefit, as well as fitting within one of the 13 charitable purposes above. Previously, some charitable purposes were presumed to be of public benefit, and no further test was applied. That will no longer be the case.

This raises the obvious questions of what we mean by ‘public benefit’, and how the public benefit test will be applied in practice. During the process of drafting this bill, we discussed these questions with a range of stakeholders. Many groups we spoke to felt that it would be important to define ‘public benefit’ in the bill, to ensure a consistent and well-understood approach. Other groups were concerned that a legal definition would be inflexible. They felt it might inadvertently discriminate against some groups, and it would not allow the charity sector to evolve in new directions.

Following these discussions with the representatives of the sector, we considered imposing a duty on the Courts and OSCR to have regard to specific criteria, when making decisions about charitable status. Our proposed criteria were :

- Public benefit must outweigh any possible public harm.
- The benefit need not be restricted to material benefit.
- Public benefit must be provided to a class of beneficiaries who are members of the general public, or who constitute a sufficient number of members of the public within a particular community. It must not be provided on the basis of personal or other connection to a charity.
- Any private benefit to an individual, other than those arising through pursuit of the charity’s purposes, must be legitimate and incidental to the pursuit of the charity’s purposes.

-
- Public benefit is not affected by any charge for services providing charges are set at a level that does not exclude or deter a substantial proportion of potential beneficiaries.

On reflection, we now think, however, that setting out these criteria in the Bill may present a number of problems.

Because of the complexity of what constitutes public benefit, an attempted definition may in practice only serve to confuse. The detail of the current legal position is already very developed in case law and we could lose access to and alignment with established thinking in trying to set this out in legislation.

The Home Office is proposing that the Charity Commission for England and Wales should develop and apply its own test of public benefit based on case law, and that it should review particular charities – or classes of charities – whose credentials it considers problematic. As the Home Office is not proposing to define public benefit, there is a danger that us doing so would increase the possibility of divergence between the systems.

Most importantly, however, we feel that a legislated definition of public benefit may well limit OSCR's and the Scottish Courts' ability to adjust the definition of public benefit to meet the requirements of particular circumstances and changes in sector and social norms. We do not believe that setting the concept of public benefit in stone would benefit either the charity sector or wider society.

In the draft Bill, we do not define public benefit. Instead we propose that OSCR should be required to publish guidance setting out how it will interpret public benefit, and how it will decide whether an organisation meets the charity test. It will be expected to consult with the sector before issuing the guidance. The final arbiter of 'public benefit' in Scotland will remain, of course, the Scottish Courts.

We would welcome your views on whether we should leave the interpretation of 'public benefit' to the regulator, or provide broad criteria in our Bill – and, of course, on the criteria we set out above.

We deal with the issue of charity independence in section 3 of this paper (charity governance).

2. Establishing a statutory charities regulator in Scotland

One of the biggest perceived gaps in charity regulation in Scotland has been the lack of a single registrar or regulatory body. There is no equivalent in Scotland to the Charity Commission for England and Wales. At present, charity status is awarded by the Inland Revenue to organisations who meet the current definition for tax purposes. The newly-established Office of the Scottish Charity Regulator is able to call for charity accounts and reports, and investigate whether charities are complying with existing law.

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Role of a charity regulator (s1-6)

The McFadden Commission recommended that a single charity regulator should be established in statute. They called for the regulator to be independent of government and to perform the following functions:

- The determination of charitable status
- The maintenance of the charity register
- The provision of public accountability of charities
- The monitoring of Scottish charities
- The provision of a support service
- The protection of the public.

Most of these proposed functions have been greeted with consensus.

The draft Bill provides for the establishment of the Office of the Scottish Charity Regulator as an independent statutory body. OSCR's role will be to regulate charities proportionately and transparently, in the public interest.

OSCR will maintain a publicly accessible register of all bodies eligible to operate as charities in Scotland (s3). The register will be available to any member of the public online or in hard copy. It will include a range of information provided by the charity. All bodies wishing to operate as charities in Scotland will be required to register with OSCR, providing contact details and various other information and informing OSCR of any changes to this, including if they cease to exist. OSCR can require a charity to change its name if it is likely to lead to confusion or to cause offence (s9-11).

OSCR will register organisations as charities if they meet the definition set out above. We will amend local government legislation to ensure all charities registered by OSCR will have access to mandatory local rates reliefs. We expect that charities registered by OSCR will also have access to UK tax reliefs through the Inland Revenue. OSCR will be under a duty to keep the register under review and remove charities when they no longer fit the definition or if they cease to exist. Only bodies on the register will be able to call themselves charities in Scotland. OSCR will be able to direct an unregistered body to stop representing themselves as a charity. All charities on the register must state their charitable status on correspondence and published documents. Charities will have a duty to provide information to OSCR, free of charge, for the register (s17-23). We will set out more detail on what information is to be provided in regulations later on. It will be an offence to knowingly supply false or misleading information to OSCR. Charities will also be expected to continue to provide their accounts or annual report to any member of the public free of charge, on request. They will only be able to refuse to do so where they can show that the request places an unreasonable burden on them.

A body on the register will be entitled to describe itself as a charity, a registered charity, or a charity registered in Scotland. If it is established or managed in Scotland it can also describe itself as a Scottish charity, or a registered Scottish charity (s12).

We recognise that these proposals mean that charities which are registered in England or further afield, but also operate in Scotland, will be subject to more than one regulator. We believe it is very important for the public to know that any charity operating in Scotland is subject to the requirements of Scots Law, and therefore this dual registration and regulation is justified. We are clear that in practice, information technology and sharing of information between regulators will mean that charities should not be unduly burdened by the requirement to register in two places and comply with two regulatory processes.

OSCR will be expected to co-operate with other regulators (for example the Charity Commission or Companies House) to minimise the burden of registration on charities already registered elsewhere (s23). In practice, this co-operation is already underway, and OSCR is preparing the ground with regular constructive meetings with other regulators. OSCR will take a proportionate approach to information requirements for charities with more than one regulator. There is no requirement for UK charities, for example, to provide separate Scottish accounts or reports to OSCR. They will be expected to provide consolidated information on their UK operations to OSCR in the same way as they currently do to the Charity Commission. However, OSCR will only take action regarding their Scottish activities.

Support and advice for charities

The McFadden Commission saw the charity regulator as a 'one-stop shop' for charities in Scotland and recommended that it should be the principal source for advice and information. No consensus emerged on this recommendation during subsequent consultations. Some agreed with McFadden, while others expressed concern about the possible tensions between the regulatory and advisory roles. We believe that there is a distinction to be drawn between the two roles, but that it is neither practicable nor desirable to set it out in legislation. The approach we have taken throughout this Bill is to set out principles which OSCR will interpret. This will allow flexibility as the charity sector develops over time.

We are clear that OSCR's principal role will be to determine whether charities are complying with the requirements set out in this Bill, and OSCR should be able to give advice to individual charities, or groups of charities, on how best to comply with the law. We recognise that there will be a grey area between compliance with legal requirements, and promotion of good practice. We feel it will be valuable for OSCR, as an important party in discussions on charity issues, to be able to comment on charity practice in terms of the public interest in having effective charities.

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We expect OSCR to enshrine accountability and transparency in its operations. The principles of good regulation which run throughout our proposals make it clear that OSCR must ensure that any views it expresses are firmly based on meaningful consultation with the charity sector and other interested parties. Further, OSCR must make it clear to all concerned where its comments focus on charity practice, or where they are directly related to compliance with the law. It must be clear where charities have discretion to decide whether to follow OSCR's advice, or where there will be penalties for non-compliance.

A range of agencies and professions already exist to provide advice and support to charities on legal requirements and good practice. OSCR will work alongside sector support providers to ensure that charities have access to the support they need to understand and comply with the new arrangements in this Bill.

Form of the regulator (s1-2 and Schedule 1)

There are a number of different possible types of statutory regulator. For example:

- Executive agency (eg Communities Scotland, OSCR at present)
- Non-departmental public body (eg Scottish Natural Heritage)
- Non-Ministerial Department (eg Charity Commission for England and Wales)
- Parliamentary Commission (eg Scottish Information Commissioner)

The McFadden Commission considered these various forms, but concluded that the regulator's form was less important than its function.

Following this approach, we set out what we felt were the most important characteristics for a charities regulator:

- Independence from government
- Independence from the charities sector
- Ability to contribute to Executive policy-making for the sector
- Accountability (to its funding body)
- Accountability (to the public and to stakeholders)
- Governance structure represents a range of skills, interests and backgrounds
- Decisions can be appealed cheaply and easily

These characteristics are closely linked to our five principles of good regulation, set out above, and echo key recommendations of the Better Regulation Task Force's report on independent regulators. Looking at all the available forms, we came to the view that it is best for OSCR to become a Non-Ministerial Department under the new law. We have based this decision on considerable research and consultation. The charity sector had strong views that neither an Executive agency nor a Non-Departmental Public Body would provide the required levels of independence from Ministers. We considered establishing OSCR as a Parliamentary Commission, but received feedback that this would be too much of

a departure from existing practice, where the Scottish Parliament only appoints single Commissioners, and where those Commissioners generally have an important role in scrutinising Executive practice. It therefore seemed that a Non-Ministerial Department was the most appropriate vehicle which would allow OSCR to be established with a governing board independent of Ministers, with accountability to Parliament and to stakeholders.

More information about different types of government body is available at the Cabinet Office Public Bodies website. A useful table comparing different forms of body can be found at <http://www.cabinet-office.gov.uk/agencies-publicbodies/guiddepts/docs/classificationguidance4.pdf>.

The Cabinet Office publication 'How to Classify Public Bodies' (available at the website above) summarises the characteristics of a Non-Ministerial Department as follows: 'NMDs are small government departments in their own right, established to deliver a specific service and not funded by a sponsor department. The precise nature of their relationship with Ministers varies... but the general rationale is to distance the day-to-day administration of the particular activity from direct Ministerial control, while retaining some Government input to the wider policy context.' NMDs are usually headed by a commissioner or board with statutory responsibilities. Staff of NMDs are usually civil servants. Further examples of NMDs include the Inland Revenue, and the Office of Fair Trading.

It is estimated that OSCR will require funding in the region of £2-3 million per annum. As this must be provided by public funds, arrangements will be set in place to ensure accountability and that OSCR is effective and exemplifies best practice.

For most public bodies this is achieved by a framework of controls overseen by Scottish Ministers, for example the appointment of board members, agreeing the level of funding, approving corporate plans, approving overarching terms and conditions of service for staff including the appointment of the chief officer. The sector has made it clear throughout our earlier consultations that the involvement of Scottish Ministers would either not be appropriate or need to be a light touch in the case of OSCR. We have taken this on board in framing OSCR's structure in the Bill.

OSCR will work within a framework of accountability including:

- accountability to the Scottish Parliament
- production of annual report and accounts
- audit by the Auditor General for Scotland
- published corporate plan
- open meetings
- open consultation
- accessible website.

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As a Non-Ministerial Department, OSCR would be a Crown Body and part of the Scottish Administration. It would be accountable to Parliament for its actions.

OSCR will not be subject to the direction or control of Scottish Ministers. As a NMD, OSCR would operate in accordance with this Bill, which sets out its functions and the process for laying its annual report and accounts before the Scottish Parliament.

It would be normal for Ministers to appoint non-executive members to a NMD board following open appointment procedures. Robust application of public appointments principles should ensure a degree of objectivity sufficient to safeguard OSCR's independence, and it would be necessary to make sure that the full range of stakeholders were able to put forward names for consideration. If, however, it was felt that there was an exceptional need to emphasise OSCR's independence, an alternative suggestion might be for the appointments to be made in some way by the Parliament, although this would be subject to agreement with the Parliament and may have implications for parliamentary procedures and resources. Other alternatives may also be feasible. OSCR staff, including the Chief Executive, would be appointed by the Board in accordance with the Civil Service Code and classified as civil servants.

We would welcome your views on the appropriateness of OSCR's form, appointments and functions as set out here and in the draft Bill.

3. How charities should be governed

Charities are independent organisations, and the charity sector is highly diverse. It is not appropriate for government to create rigid structures for the way charities operate. The role of charity boards and management committees will continue to be crucial in ensuring that the charity is working effectively and that the public is right to have confidence in its work. The McFadden Commission stated in its report: 'In our view, the public is entitled to some reassurance that the organisations calling themselves Scottish Charities are managed properly'. The Commission felt so strongly about the need to underpin the independence of charity boards, that they recommended making this a criterion for registration as a charity.

Thousands of people from all walks of life across Scotland dedicate their time to volunteering on charity management boards. Without their energy, skills and enthusiasm, the charity sector, and Scotland as a whole, would be much the poorer. It is important that charity regulation supports these volunteers to do their jobs well. Acting as a charity board member is a responsible position, with a range of duties attached. Sometimes these duties are not clear, and they differ depending on the organisational form of the charity. It can be difficult for board members to have a full understanding of their legal responsibilities, and any liability they may have for decisions they take.

Expectations are constantly evolving in terms of the responsibilities of charity boards. The public expects that charities should be well-run, use their funds wisely, and be transparent and accountable for their actions. Funders of charities have detailed expectations in terms of the activities charities undertake for funds provided, and how they report on these. It is the job of charity board members to ensure that their charity meets these expectations wherever possible. There is an ongoing and important discussion within the charity sector and more widely in terms of good practice in charity governance. In developing this draft Bill, we decided that it was crucial to set out clearly and explicitly the responsibilities of the individuals concerned in running charities. These duties are based on those that already exist in company and trust law, and we feel that setting them out clearly in our Bill will create a vital foundation for the regulator's expectations of charities, and for board members themselves.

Charity stewards (s81)

A more minor, but also important point is that we do not have a legal term for charity board members in Scotland. Wording in previous legislation ('persons concerned in the management or control of a charity') has been criticised as opaque, and can be interpreted narrowly or widely. English legislation uses the term 'charity trustee' to mean a volunteer manager of any type of charity, whether a trust, limited company, or unincorporated body. We feel that it is important to have a clearly understood term for people in this responsible position, which must be consistent with wider Scots Law. We considered the term 'charity trustee' – which is widely understood by members of the public – but felt that it conflicted with existing use of the title 'trustee' in trust law. As a result, we are suggesting the term 'charity steward' to mean any person voluntarily governing a charity or sitting on a charity board.

We welcome your views on the suggested term 'charity steward'.

Duties of charity stewards (s50)

In our Bill, we suggest that charity stewards should be under a duty to always act in the best interests of the charity and ensure it follows its charitable purposes. We also suggest they should use the same care and diligence that a person of ordinary prudence would use in managing the affairs of others. A charity steward who acts as such in the course of his or her business or profession should in addition have to use any special knowledge or expertise that it is reasonable to expect of a member of that business or profession.

OSCR will be expected to investigate any charity where it suspects that a charity steward is not complying with these duties. Breach of charity steward duties will be an offence and may lead to action by OSCR as set out in section 4 below.

The Executive is fully committed to promoting the independence of charities. In pursuing this, we feel the key issue is not so much about how charity board members are appointed (as the McFadden Commission suggested), but about how they act once they are appointed. The duties set out above are intended to ensure that charity stewards are free from external direction. We believe that this underpins the principle that charities' governance should be independent from government, funders and other external interests. Such duties already exist in common law, but we feel it is valuable to codify them so that charity stewards are clear about their responsibilities.

The inclusion of this section in the Bill reflects Ministers' existing commitment to charity independence. For example, in December 2002, the Deputy First Minister Jim Wallace announced that all NDPBs with charitable status would be expected to have this status reviewed during their next five-yearly reviews. He pointed out that there is a divergence between charity law requirements on independence, and existing Executive policy on ministerial direction of public bodies. So far six of these bodies have considered the issue, deciding to end their NDPB status and remain charities. We expect reviews of all NDPBs to be completed by the end of 2007.

We welcome your views on the duties described above.

Disqualification (s51-52)

The draft Bill sets out types of people who will not be allowed to be charity stewards. It will be an offence for a disqualified person to be a charity steward. There will be no sanction against charities which inadvertently appoint a disqualified person to be a charity steward, and actions taken by a disqualified steward will remain valid despite the disqualification.

Categories of people disqualified from being charity stewards include:

- people convicted of an offence involving dishonesty
- undischarged bankrupts
- people subject to disqualification under the Company Directors Disqualification Act 1986
- people who have previously been removed as charity stewards due to mismanagement or misconduct.

In practice, it may be that prospective charity stewards are asked by the charity to vouch that they are not disqualified. OSCR will be able to grant a waiver of a disqualification where a convincing case is made.

4. Powers to deal with wrong-doing in charities

Any regulator must have an important role in ensuring that the rules are followed effectively by all. We believe that it is crucial for the Office of the Scottish Charities Regulator to have adequate powers to investigate complaints, monitor compliance with the law, and act to deal with wrong-doing. The charity sector has made it clear that such powers are vital to promote public trust, and to protect the vast majority of well-managed charities from the damage that can be done by a few rogue operators.

At present, OSCR has powers to investigate charities both pro-actively and in response to complaints (OSCR took over this role from the previous body responsible – the Scottish Charities Office – in December 2003). The Scottish Ministers then take serious cases through the civil courts. Where the Court of Session agrees that there has been mismanagement or misconduct by the charity or its board, the court can safeguard the assets of the charity for example by removing trustees, freezing assets, or appointing a judicial factor to manage the charity.

In practice, this system has worked well, but recent high profile cases have highlighted public concerns about the length of time that it can take to follow this process, and raised concerns within the charity sector about opaqueness of the existing system.

To deal with these concerns, we are building on the existing system and increasing OSCR's powers in a few key areas to allow for greater speed in protecting charity assets. However, we are also making the system clearer for charities and ensuring that there is a free, accessible appeals process against OSCR decisions. OSCR's powers to act without going to court will be time-limited to six months, and any extension will need to be agreed by the Court of Session. In practice, we expect that the majority of OSCR's work will continue to focus on supporting charities to change their practice in order to comply better with the law. But it is also important for the regulator to have effective powers to deal with the occasions when advice and direction are not sufficient. Our proposals within the draft Bill are summarised below:

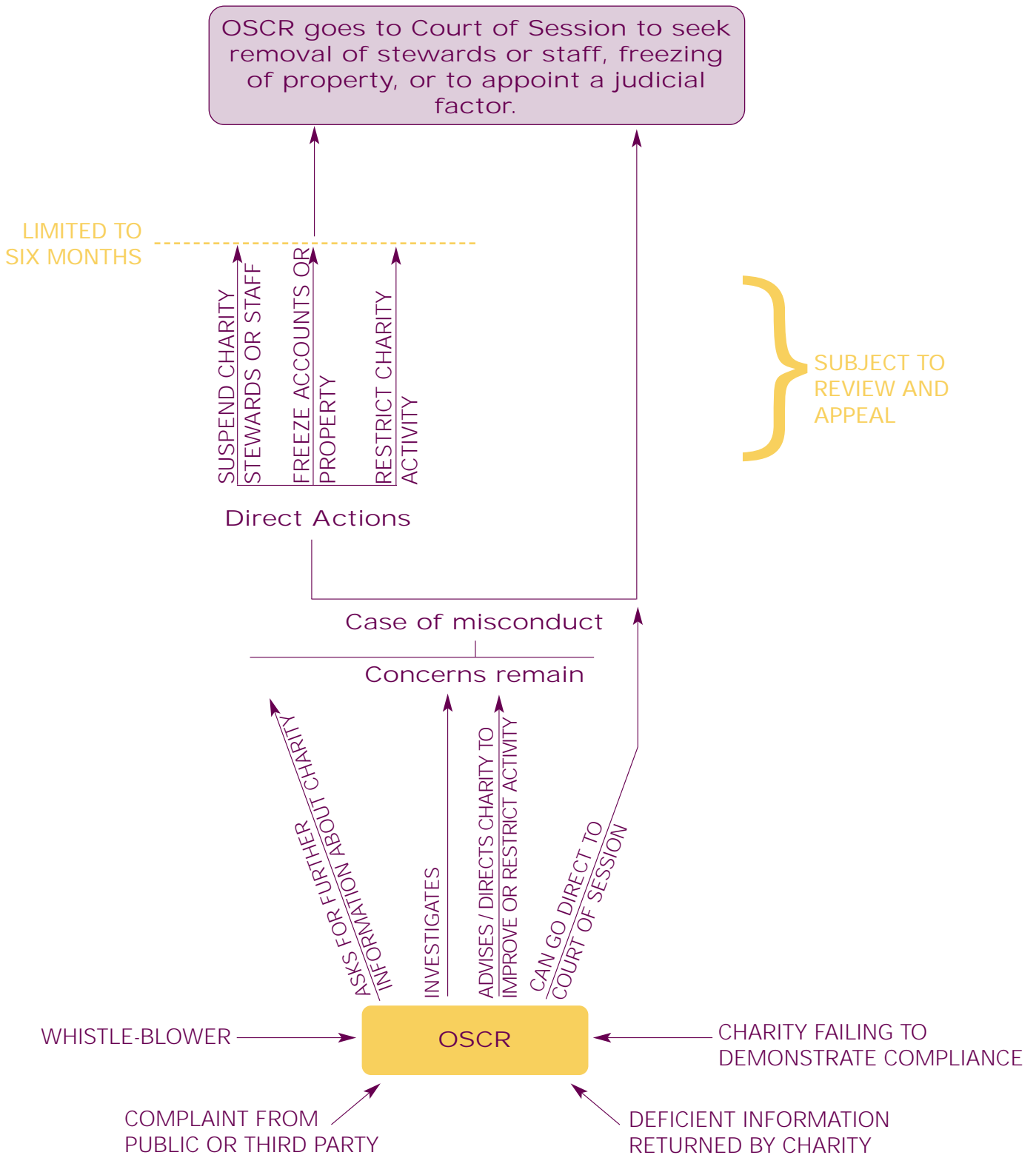
Supervision of charities (s24-33)

- OSCR will have a power to make inquiries regarding any charity, any non-charity calling itself a charity (or person representing themselves as acting for a charity), or any body carrying out a public activity or function on behalf of a charity.
- OSCR will have a power to demand relevant information from any person or body for the purpose of its investigations within a specified time period.

Draft Charities and Trustee Investment (Scotland) Bill

- If OSCR is satisfied after an inquiry that there has been misconduct in the affairs of a charity, it may suspend for up to six months any steward, manager, agent or employee who appears to have been responsible.
- OSCR will also be able to freeze bank accounts, securities or property, and restrict the transactions entered into by a charity (or body holding itself out as a charity) for up to six months.
- OSCR will have the power to stop a non-charity from calling itself a charity.
- In the case of a body acting for a charity (for example a professional fundraising company), OSCR will be able to order it to cease this activity for up to six months where OSCR is satisfied there has been misconduct in of any of the activities it is carrying out for the charity. OSCR will also have the power to oversee the use of any outstanding sums collected for the charity or any money or property held by that body on behalf of the charity.
- It will be an offence for the body or person not to comply with directions from OSCR as above.
- OSCR may also apply to the Court of Session, and the court may appoint a judicial factor to manage the charity, appoint or remove stewards, or freeze any money, securities or property. The court will also be able to approve a scheme by OSCR for the transfer of assets to another charity.

OSCR Investigations and Actions



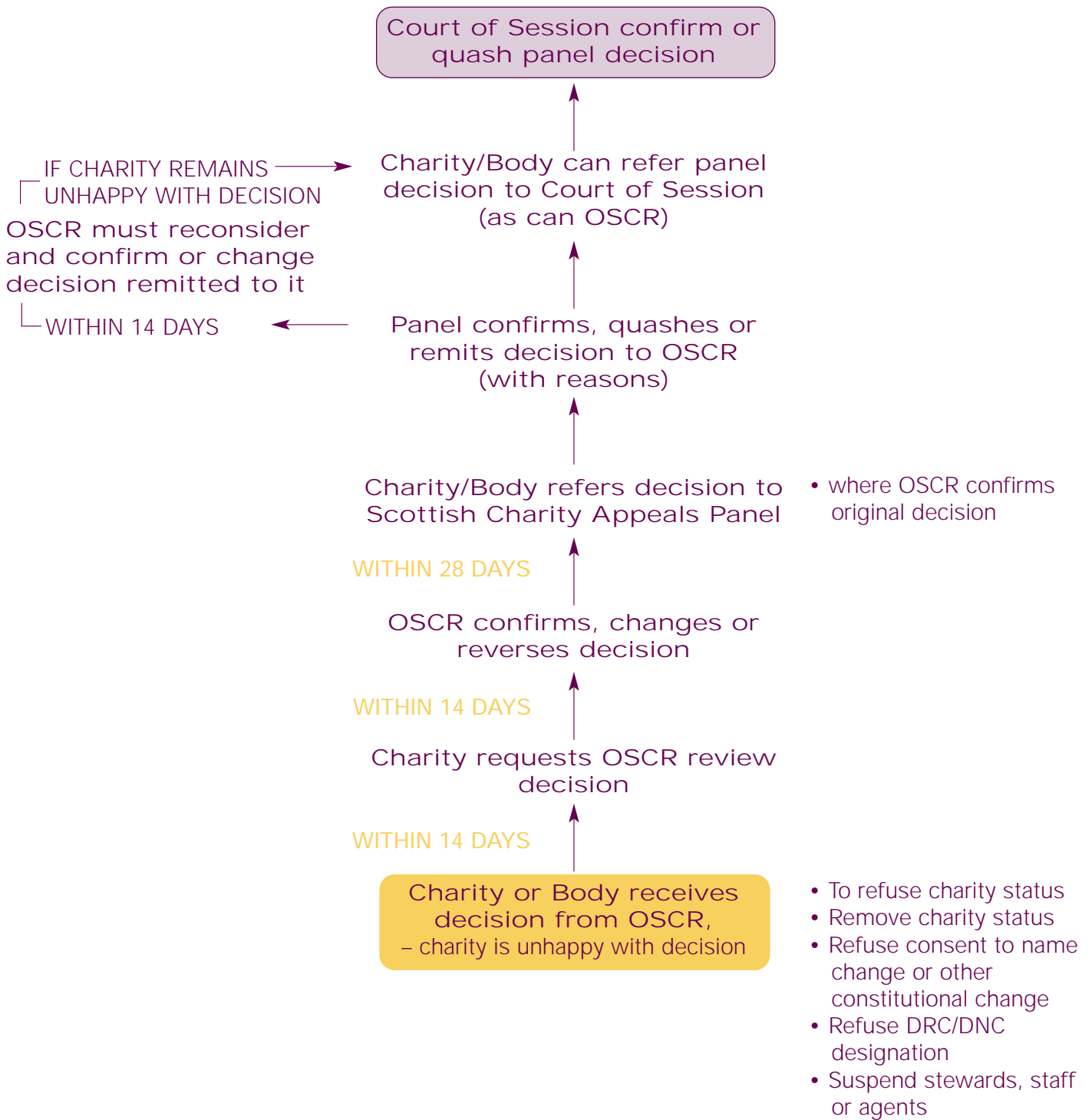
Appeals against OSCR decisions (s43-49 and Schedule 2)

Under the current system, charities who feel they have been wrongly dealt with by OSCR are only able to challenge its decisions or actions through the court. Our proposals to increase OSCR's direct powers to act against charities must be balanced by an accessible appeals procedure for charities who wish to challenge OSCR's decisions. The Bill sets out a straightforward, free appeals process for charities:

- Decisions by OSCR will be open to internal review. The system for this will be left to OSCR to decide, although the Bill sets out limitations on time and describes some basic requirements such as the types of people entitled to seek review. There will be no fee for an internal review.
- The charity can refer the decision of an internal review to an external appeal panel of three independent members, which will sit on an ad hoc basis. Panel members will be appointed by Scottish Ministers and the arrangements for funding will ensure the panel's independence from OSCR. The structure of this panel will be flexible enough to accommodate a varying workload.
- The panel will either dismiss the appeal, refer the case back to OSCR with a direction with which they must comply, or remit the issue to OSCR for reconsideration.
- The detailed procedure for the panel will be provided for in regulations.
- It will be possible to appeal decisions to court.

Members of the public or other third parties who wish to challenge OSCR's decisions or its handling of their complaints, will be able to take these through the existing avenues of the Public Services Ombudsman or judicial review.

Appeals



5. Regulating charity fundraising

21st century charity is big business. Estimates from the Scottish Council for Voluntary Organisations show that Scottish charities raise over £2 billion a year to spend in our communities. Charities raise funds from a vast range of sources: from government grants and contracts; from local authorities; from the National Lottery; from other charities; from trading and investments; from corporate sponsorship; and of course from public donations (which provide around £240 million a year to charities in Scotland).

Government has no interest in increasing red tape for charities raising funds – in fact, the Strategic Funding Review (see p. 5 above) will set out a wide range of actions to make it easier for charities and voluntary organisations to access funding, generate income and be sustainable.

However, effective regulation must promote public trust in charities, and fundraising from the public is one area where this trust has been significantly dented by lack of a legal framework.

The draft Bill sets out an important foundation of statutory regulation of charity fundraising, which we hope can be further developed by self-regulation within the charity sector.

The UK Cabinet Office Strategy Unit report recommended the establishment of a self-regulation scheme, with powers for the government to introduce statutory regulation of fundraising if necessary. In response to the recommendation in the Strategy Unit report, the Institute of Fundraising set up the Buse Commission to devise a structure for the self-regulation of fundraising organisations and activities. The Buse Commission reported with a model for self-regulation in January 2004. We have decided to allow a self-regulation scheme time to prove its worth, by setting out the fundamentals for transparent charity fundraising in our bill, which can be complemented by good practice standards drawn up and overseen by a self-regulatory body. However, we have included in this draft Bill a power to regulate fundraising if we feel that self-regulation has not been effective. Our proposals for regulation of fundraising in Scotland, overlaid by a self-regulatory structure, are summarised below.

General Fundraising Powers (s60-62)

The Bill is drafted to capture fundraising by, and for, 'benevolent bodies'. This is a wider concept than charity, and means that we can regulate any fundraising for a good cause, whether or not the body raising funds is a registered charity.

The Bill gives charities and benevolent bodies the right to seek an interdict preventing unauthorised fundraising by anyone who uses fundraising methods in their name which the body objects to, who is not a fit and proper person to

fundraise or if the body does not wish to be associated with that venture.

It will be an offence to solicit money or other property for a body by suggesting that the body is a charity when it is not. As mentioned in section 4 above, OSCR will have the power to investigate individuals purporting to be a charity or to be collecting on behalf of one when they are not, and to protect any funds raised in this way. OSCR will have a general power to protect charity assets or money raised, even if they are not held by a charity.

Fundraising by Professional Fundraisers and Commercial Participators (s61-63)

Professional fundraisers and commercial participators (*see glossary*) who solicit money or other goods on behalf of a named charity or benevolent body must have an agreement with that body to do so. There will be a power allowing the content or format of any contract to be set out in secondary legislation.

Charities and OSCR will have the right to seek an interdict to stop professional fundraisers and commercial participators who are fundraising in a charity's name without an agreement or outwith an agreement in the required form. An agreement which does not meet statutory requirements is not enforceable against the charity except through the courts.

Professional fundraisers and commercial participators will be required in regulations to make a statement to potential donors about the amount of the funds they will receive and commercial participators about the amount that will go to the charity or cause. Professional fundraisers and commercial participators who do not meet this requirement will be committing an offence.

Self-regulation and its effectiveness (s64)

The exact model of self-regulation of fundraising in Scotland is obviously an issue for the sector itself to consider and implement. We await detailed proposals with interest. To ensure the public is properly protected, our Bill includes a reserve power to allow further statutory regulation of fundraising in Scotland if Ministers feel that self-regulation has not been effective in improving public confidence in charities. There would be an option of different provisions for different methods of fundraising or different classes of person/institution. Regulations could also require people or organisations involved in fundraising to follow a code of practice and could establish a kitemark system. Failure to comply with these regulations would be an offence. There would be a requirement for Ministers to consult before making any regulations.

Public benevolent collections (s65-71)

Our broad policy objective is to continue the existing system of a local authority lead in licensing public charitable collections (now renamed 'Public Benevolent Collections') with some improvements.

Public benevolent collections (PBCs) are redefined in the draft Bill to include collections of money and promises of money from the public in a public place. Currently, street collections which ask for donations by direct debit or standing order are not regulated, because money does not change hands on the street. We plan to ensure that the system captures these types of collections. The definition of 'public place' will be made clearer to include any place to which the public have unrestricted access when it is open. If this is private land, the owner's permission will be required and the owner will have discretion to refuse permission, notwithstanding local authority permission.

We do not plan to regulate door-to-door collections of goods by charity shops, since evidence suggests that existing codes of practice work well, and there is little negative effect on public confidence from these types of collections.

Similar to the existing arrangements, organisers of PBCs must apply to the relevant local authority for permission to collect at least two months before the date of the collection. The local authority may impose conditions, including when, where or how the collection should take place. The provisions also specify on what grounds a local authority may refuse or withdraw permission. Local authorities will have discretion to fast-track applications for emergency appeals (disaster relief, for example) when necessary. There will be more detail on how PBCs should be carried out in regulations, which could provide different, appropriate systems for cash collections and for promises of money (direct debits).

OSCR will have a role in working with local authorities and police forces in Scotland to provide advice on the law, and to support them to agree consistent practice in their processes for dealing with PBCs. We want to make sure that the system set out in this Bill is better understood, and better used, by all parties involved. This should ensure that local authorities are better supported to carry out this role, and that charities can operate on a more level playing field across Scotland.

'Designated national collectors' will take the place of the current 'exempt promoter' scheme for charities collecting across a range of local authority areas, and will be recognised and regulated by OSCR. OSCR will be required to establish the criteria for achieving this status, and to consult on this. Designated national collectors will be required to provide the local authority with three months' notice of any PBCs they intend to hold. They will not be able to give more than eighteen months' notice, in order to avoid 'block booking' years in advance. The local

authority will be able to refuse permission if the collection raises public order issues (it must state the reason for refusal within one month of being notified). All existing 'exempt promoters' will be known as designated national collectors on enactment of the Bill until OSCR reviews this designation.

Charity trading

The Cabinet Office Strategy Unit report (2002) recommended that charity law should be amended to allow charities to undertake all trading within the charity, without the need for a trading company. The power to undertake trade would be subject to a specific statutory duty of care. In effect, this proposed de-coupling charity law from tax law in relation to trading. The recommendation was that a charity would be able to engage in trading which would make it liable for tax on trading profits.

The Home Office response to the Strategy Unit report referred to the fact that few respondents to the consultation gave an unequivocal welcome to this recommendation. There were concerns about the exposure of charities (and trustees) to risk. There was unhappiness about exposing charity trading to tax liability, without the tax advantages of a trading subsidiary. Larger charities were happy with the existing system and did not expect to re-structure their existing operations to take advantage of such an opportunity.

The Home Office referred to the need for a level playing field between the charity and business sectors in relation to trading. It decided not to take forward the Strategy Unit recommendation. We agree with this approach, and have decided not to deal with charity trading in our Bill. OSCR will be expected to provide guidance to charities in Scotland on appropriate trading activities.

6. Improving the operating environment for charities

Existing charity law has not always made it easy for charities to operate as modern not-for-profit organisations, and can be seen as a barrier to change. The Bill covers a range of improvements to the existing regime, which charities have been calling for in recent years. It will create a simpler, cheaper process for charities seeking to change their constitutions, merge or wind up. It will improve procedures for OSCR's role in re-distributing the funds in dormant bank accounts belonging to charities. It will update requirements for particular types of charity, like designated religious bodies and endowments. It will modernise the accounting framework for charities, widen trustees' powers of investment, and create a new legal form – the Scottish Charitable Incorporated Organisation. Each of these reforms is set out in more detail below.

Making charity re-organisation easier

(a) Charities generally:

- Any charity wishing to change its contact name and address must notify OSCR (s10).

(b) Charities with the power to change their own constitution (s13-14):

- Any charity must notify OSCR of any intention to change its constitution, merge with another charity or wind up.
- Current law preventing a change from charitable to non-charitable status will be repealed. A charity wishing to abandon its charitable status must make an application for the prior written consent of OSCR. OSCR will only be able to give consent where it is satisfied that the change of status will not affect the application of any property or income.
- OSCR will be required to give or refuse consent within 28 days of receipt of an application for any change. The decision will be subject to appeal procedures.
- In the case of a winding up of a charity, OSCR will ensure that any remaining property after meeting claims and liabilities is transferred to another charity with a similar purpose. Alternatively, where a charity is being wound up, but its activities continue via a non-charitable organisation (for example, a charity chooses to convert to a community interest company or other non-charitable form), OSCR will continue to have a role in ensuring that the ex-charity's assets are locked in to its charitable purposes. Separate accounts will be required for the locked assets, following charity rules.

(c) Charities and public trusts whose constitutions do not allow them to make constitutional changes (s55-58):

- The power to re-organise public trusts will remain with the Court of Session, but the court will be able to approve any change to the trust deed, not just the trust's purposes.

-
- Re-organisation of medium-sized charities and trusts should take place in the Sheriff Court (a possible threshold for regulations would be an income of less than £100,000).
 - Re-organisation of small charities and trusts will be able to take place without court approval, but with OSCR's consent if they are charitable (a possible threshold for regulations would be an annual income of less than £10,000).

(d) OSCR's powers to apply to re-organise a Scottish charity:

- OSCR will have the power to apply to the court for approval of a scheme to re-organise any Scottish charity. OSCR will have a duty to notify the charity stewards.

Procedures for the redistribution of money held in charity dormant accounts (s34-35)

- OSCR will be given powers to take ownership of a dormant charity account when it has been notified by a financial institution that every account held for that charity is dormant, and where OSCR is unable to locate any charity steward.
- OSCR will be able to use these powers for the purposes of transferring the balance on an account to another charity with similar purposes, or, if it cannot discover the purposes of the charity holding the dormant account, to any other charity.
- Financial institutions have express permission through the Bill to disclose information to OSCR to allow it to perform this role.
- These provisions will apply to dormant charities currently recognised under the current legislation as well as charities registered by OSCR once this legislation is enacted.

Amending the system for designated religious bodies (s53)

- OSCR will have the power to recognise certain charities as 'designated religious charities' (DRCs). The provisions in the Bill will slightly amend the existing system for 'designated religious bodies', where some religious bodies which are charities are exempted from some reporting and accounting requirements. This section of the Bill has been developed in recognition of the particular constitutional position of the Church of Scotland, but designated status will in fact be available to any religious charity of any faith, if it can meet the criteria.
- The criteria for DRC status will be the same as current criteria for 'designated religious bodies': their principal purpose is promotion of a religious objective; their principal activity is the regular holding of acts of worship; they have been established in Scotland for at least ten years; and they can demonstrate a membership of not less than 3000 people resident in Scotland aged over 16. Applicants for DRC status must also demonstrate that they have an internal organisation over which one or more authorities in Scotland exercise

supervision, and through which the supervising authority requires the keeping and auditing of accounts which correspond to the requirements of OSCR.

- Existing designated religious bodies under the 1990 Act will be deemed to be DRCs for a period of one year, during which they must apply to OSCR to have this status confirmed. We will set out transitional arrangements in secondary legislation.
- OSCR will have the power to remove DRC status if it believes that the body no longer meets the criteria or if after investigation it is felt no longer appropriate for the body to be designated. Notice of revocation will be served and will be subject to an appeals process.
- DRCs will be exempt from requirements to provide their accounts in the standard charity format, and the powers of OSCR/Court of Session to suspend or disqualify a person from management or control of the body or to direct the body to cease operating will not apply to them. However, they will be required to submit accounts (in an agreed format) and report to OSCR and will be supervised and investigated in the same way as any other charity. Although OSCR will not be able to suspend or disqualify DRC stewards where it finds wrong-doing, it will be able to restrict the DRC's activities, freeze bank accounts, and of course, remove DRC status.
- Detailed accounting requirements specifically for DRCs will be set out in regulations.

Synchronising the regime for Endowments (s59)

- Educational endowments and other types of endowments which are charities will now be subject to charity regulation and re-organisation processes in the same way as any other charity. There will continue to be a separate register of educational endowments, which is maintained by the Student Awards Agency for Scotland.

Setting out framework accounting and reporting requirements of charities (s36-37)

- This chapter of the Bill sets out the basic requirements, and regulations will provide further detail.
- Charities will be under a duty to provide OSCR with annual accounts which will include a report on their activities. Regulations will prescribe the form of these accounts and the thresholds according to which different requirements will apply to different sizes of charity.
- The Bill includes a requirement for audit or independent examination of accounts. Again regulations will set out thresholds according to which different requirements will apply to different sizes of charity.
- It is intended that the regulations rely on the Accounting Standards Board Statement of Recommended Practice for charities (which is currently being revised) wherever that is appropriate. We will consult on these regulations shortly.

Widening trustees' powers of investment (s73-75)

- Part 4 of the Bill implements the recommendations of the Scottish Law Commission to widen the powers of investment of trustees of Scottish trusts (whether or not they are charities, public or private trusts), while still requiring them to act prudently to safeguard the capital of the trust. The recommendations were contained in a joint report of the Law Commission and the Scottish Law Commission which was published in May 1999 and recommended reform of the law in England and Wales and in Scotland to give trustees wider investment powers because the existing legislation was considered to be outdated and unduly restrictive. The Trustee Act 2000 implemented the provisions for England and Wales, but implementation for Scotland was deferred until the McFadden report had been considered. The changes in this Bill will benefit trusts in Scotland which do not have adequate powers in their trust deeds by enabling them to invest trust assets in ways which may produce a better return than the investments to which they are restricted at present.
- Many Scottish charities have also called for access to Common Investment Funds, currently only available for charities in England and Wales. Access to these funds is a reserved matter, and the Home Office Bill has provided us with an opportunity to widen the schemes to cover Scottish charities. For more detail on these provisions, please see the draft Home Office Bill (available at www.homeoffice.gov.uk/comrace/active/charitylaw/index.html).

A new legal form for charities – Scottish Charitable Incorporated Organisation (s38-42)

- Chapter 6 of the Bill creates a new form of legal entity to be called a Scottish charitable incorporated organisation (SCIO). It will allow charities to become corporate bodies with limited liability for members and stewards, similar to a company limited by guarantee.
 - There will also be an option for SCIOs to take a form in which members and stewards have no liability for debts. We would be interested in your views about which form is most appropriate.
 - The SCIO form will only be available to charities registered by OSCR, and will not be mandatory. SCIOs will be regulated by OSCR in the same way as any other kind of charity, and will not be subject to company law.
 - We have developed model constitutions for the SCIO and will set out the detail of how they can be established, and how existing charities can convert to SCIOs, in regulations. We will be consulting on the detail of this shortly.
- Please let us know if you would like to be involved in this further consultation.**

7. Transitional arrangements for existing charities

Regulations will set out appropriate transitional arrangements to make sure that existing charities have time and space to learn about the new procedures and ensure that they comply with them. OSCR in its current form will have a role, in partnership with the wide range of other advice providers to the charity sector, in disseminating information and supporting the transition to the new system set out here.

In order to ease the transition, all existing recognised Scottish charities will be automatically transferred onto the new Scottish charity register. They will continue to receive UK tax reliefs and other benefits, such as rates relief. OSCR will then systematically review the register and seek information from charities to ensure they fit the new definition, and are complying with the regulatory system.

We are keen for new charity legislation to be in place as soon as possible. However, we do recognise that we will need time to establish OSCR in its new form, and we will need to give the charities sector time to consider the implications of the legislation. We do not expect to implement the legislation before spring 2006.

Much of the detail of the regulatory system, and the mechanics of transparency and proportionality, will be set by regulations which will go through the Scottish Parliament after the Bill is enacted. We will consult with the sector on the detail of the regulations when they are available, and we will again ensure that there is time to take on board any concerns, and to allow charities to prepare, before we implement these.

Please visit our website at www.scotland.gov.uk/viu for background information to this consultation, and further documents.

4. Conclusion

We firmly believe that this Bill creates the modern framework for charity regulation which charities, and the Scottish public, deserve. It will create a clear, coherent regulatory structure which charities and their stewards can understand, and in which members of the public can place their trust.

It will provide charities with the tools they need to continue to flourish as independent not-for-profit organisations working for the public good in our communities.

It will provide the public with wide access to information about charities, what they do, and how they raise and spend their money.

It will be proportionate, ensuring that charities are regulated effectively according to the level of risk to public confidence, and according to their size and capacity to respond.

We look forward to hearing from you whether we have got it right.

5. Impact of proposed reforms

Draft Regulatory Impact Assessment (RIA 2004/04)

This draft Regulatory Impact Assessment aims to provide information on the options considered in relation to regulation of charities operating in Scotland, and their likely impact on the charitable sector. Under Scottish Cabinet rules, any piece of legislation which will create or extend a regulatory regime must include a consideration of the impact of regulation on the relevant sector. We would welcome your comments on the assumptions made here, in order to revise this RIA and improve its accuracy.

1. Purpose and intended effect of regulation

(i) The objective

In 2000, the Scottish Executive established the Scottish Charity Law Review Commission (the McFadden Commission) to review Scottish charity law and make recommendations for reform. The Commission reported in 2001, making 114 recommendations for change, including the consolidation of existing law, the creation of a statutory charities regulator in Scotland, and increased regulation of fund-raising and other charity activities.

The Scottish Executive is committed to reform the regulatory regime for charities, in order to support the charities sector and to safeguard the public interest in relation to charities. This draft Regulatory Impact Assessment (RIA) accompanies a consultation paper and draft Bill setting out the Executive's proposals for fulfilling this commitment.

This RIA provides background information on the options which were considered prior to the drafting of the Bill, and the probable impact and cost of these options. We would welcome views on the issues considered in this RIA, which will be amended and published in final form when the charities Bill is introduced to the Scottish Parliament.

Devolution: The draft Bill and ensuing regulations will apply to charities and their operations in Scotland only.

(ii) The background

Regulation of Scottish charities is currently governed largely by Part I of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, but a range of other statutes also apply. Organisations within the charities sector have called for reform and consolidation of the law for some time. Research commissioned by the Scottish Executive to evaluate the 1990 legislation suggested that existing legislation should be repealed and consolidated in a single Act, incorporating a number of improvements to the regulatory regime.

The McFadden Commission also identified a number of problems with the regulation of charities in Scotland. Deficiencies in the regulatory system include gaps in responsibility between different regulators, lack of a public register of Scottish charities, and lack of routine monitoring of charity activity, and may have contributed to recent dips of public trust in charities. The absence of a central point of information to charities on their duties under the law has also been suggested to be a problem for the charities sector.

The regulatory regime for charities proposed in this consultation seeks to address these gaps, and to deliver a system that is fit for purpose and protects the public interest without being overburdensome or more costly than necessary.

(iii) Risk assessment

Summary profile of the Scottish charitable sector (SCVO 2004)²

- There are 28,869 active or potentially active Scottish charities (Feb 2004).
- The vast majority of charities (92%) operate at a local or sub-regional level.
- The majority, 63% of charities have been set up to provide a service. Alongside this, 42% of charities are active in social welfare and 32% are primarily involved in Arts & Sports.
- The highest concentrations of charities are in the central belt cities of Edinburgh (13%) and Glasgow (11%), although a further 7.7% operate in the Highland council area.
- 41% of charities have their headoffice in a predominantly rural council area.
- At least 67% of charities have an income of under £25,000 a year.

Empirical evidence suggests that the vast majority of Scotland's 20,000+ charities are operating effectively for the public good in local communities. However, a handful of recent cases have shown the impact of loss of public confidence in charities in general.

Scottish charities raise around £240 million a year through donations from the general public, which equates to around 12% of the sector's total annual income. These funds are of particular value to charities as they have fewer restrictions attached than grant or contract funding, and they provide a litmus test of public support for the charity's activities. Without effective regulation of charities, there is a risk to public confidence in the sector as a whole. This could have a dramatic impact on income to the charities sector through public giving. It could have a knock-on effect on other forms of income to the sector, such as corporate giving, or even public sector funding. This would have an inevitable consequence for the vast range of services, activities and employment provided by charities in our communities.

Further loss of public confidence in charities would also be likely to impact on levels of volunteering and community engagement, potentially leading to a decline in the role of the charities sector and a subsequent loss of social capital and cohesion. For all these reasons, the charities sector itself has been a key voice calling for better charity regulation.

2. Options

In deciding to reform the regulation of charities in Scotland, the Executive initially looked at three options.

Option 1: Do nothing

It has been argued that the existing system works effectively. Organisations are recognised by the Inland Revenue as charities if they meet the requirements of tax law. Their accounting and reporting systems, and some elements of their fundraising, are set out in regulations. Complaints are investigated and, where misconduct is found, a range of sanctions can be imposed by the Office of the Scottish Charity Regulator.

However, it would be highly unsatisfactory to do nothing to improve the existing system. All research and opinion on the subject of charity law makes it clear that doing nothing is not an option. The existing system does not adequately promote public confidence in charities, and is opaque and difficult for charities to comply with.

Option 2: Develop a mixed regulatory model

This option would involve two complementary approaches. Government would prepare a single charities Bill to provide a basic framework to safeguard the public interest and to ensure proportionate regulation of charities. The legislation would be bolstered by a robust system of self-regulation to be developed by the charities sector itself.

There are some risks associated with this approach, in that self-regulatory models do not automatically attract public confidence. However, should self-regulation fail to deal with the public's concerns, the regulatory option remains open to government. The self-regulation approach is particularly attractive in relation to fundraising activities, which are not currently regulated by government, and where practice continually develops over time.

This option is considered to be most attractive, and forms the basis of the attached draft Bill and consultation paper.

Option 3: Regulate charity activity in law

The final option considered was to promote public confidence through setting out a regime to regulate charity activity through a charities Bill and associated regulations. This would entail an ongoing process of consultation between the Executive, the charities sector and other stakeholders to ensure that statutory regulation was consistent, proportionate, and in the public interest.

The risks associated with this approach are that regulation could be inflexible and fail to meet changing expectations from the public or practices within the sector. This can be seen in the existing 1992 accounting regulations for charities, which now conflict with good practice in charity accounting and fail to secure the transparency expected of charities by the public.

3. Benefits

Option 1: Do nothing

There are no obvious benefits flowing from option 1, other than, in comparison to other options, the costs-savings to the Executive in continuing with the existing system, and the possible savings to charities in continuing with existing practice. The risks to public confidence in doing nothing far outweigh these benefits.

Option 2: Develop a mixed regulatory model

This option would provide a number of benefits. Through the proposals in the attached Bill, charities will benefit from increased public confidence, leading to a potential improvement in donations and volunteering. They will benefit from a more transparent regulatory system, and from the requirement that regulators should co-operate to reduce the regulatory burden on the charities sector. They will benefit from inclusion in a national, publicly accessible register, which will increase their profile and the public's understanding of their role. They will benefit from an easier process for mergers and re-organisations. They will have access to a wider range of investment powers and to a new constitutional vehicle.

Under the proposed self-regulatory system for charity fundraising, charities and professional fundraising organisations will benefit from a flexible, developing model ensuring good practice grounded in the realities of the fundraising environment. There will be a clear, impartial avenue for complaints about charity practice. Should the self-regulatory option fail to provide the expected benefits, the Executive will reserve the power to regulate charity fundraising directly.

Option 3: Regulate charity activity in law

This option would provide similar benefits to option 2. However, charities would not have access to the benefits of flexible self-regulation of fundraising. Instead, they may benefit further by increased public confidence based on a statutory regulatory system. This possible additional benefit may, however, be counter-balanced by the costs of inflexible regulation as set out above.

Business sectors affected

All existing charities operating in Scotland will be affected by the proposals in the attached consultation paper. Currently non-charitable voluntary organisations may also be affected, since they may gain access to charitable recognition for the first time, under the revised definition of charity.

Professional fundraising organisations will be affected, since the proposals include a requirement for direct-debit fundraising to be licensed by local authorities, and a requirement for professional fundraising organisations to agree contractual terms with the charities they act for. There is also a proposed requirement that professional fundraising organisations and commercial participators should make it clear to potential donors how much of the donation would go to charity.

Issues of equity and fairness

The proposals will introduce a proportionate and consistent regulatory regime for all charities operating in Scotland. Regulatory requirements will be greater for larger charities, and do not aim to increase burdens on smaller organisations.

The proposals also introduce a requirement on the charity regulator to seek to work in partnership with other existing regulators, to reduce the regulatory burden on charities.

4. Costs

(i) Compliance costs

Option 1: Do nothing

There would be no increased compliance costs under this option. However, there may be substantial costs to the charities sector in failing to bolster public confidence, potentially leading to a loss in income and volunteer activity.

Option 2: Develop a mixed regulatory model

There may be some additional compliance costs for charities under this option. Charities will be required for the first time to lodge annual accounts and other information with the charities regulator. They will be required to be able to demonstrate that they are acting within their constitutional objectives for the public benefit.

It is not expected that these requirements will lead to significant additional costs to charities, since they are already required to make their accounts and annual report available to the public on request. However it should be recognised that there will be some cost attached, as charities will be required to follow revised accounting standards and good practice in governance. This may lead to increased training costs for charity stewards and, where applicable, their staff. Additional time may be spent completing annual returns, although the regulator will be under a duty to minimise the burden of regulation.

The self-regulatory approach to fundraising practice may involve some further costs for charities involved in fundraising from the public. The charities sector will be expected to develop and establish an appropriate model for self-regulation, to review its effectiveness, and to ensure that fundraisers within the charities sector are properly trained to follow agreed Codes.

Option 3: Regulate charity activity in law

Option 3 would entail similar costs to option 2. The key difference would be that the charities sector will not be required to establish a self-regulatory mechanism, and this role would be undertaken by OSCR.

However, statutory regulation of fundraising could lead to some increased costs and lost income for charities in later years, if the system did not develop flexibly to suit the fundraising environment.

(ii) Costs for a typical charity

It is not possible for us to identify the costs to individual organisations at this stage. We would welcome your views on this. Our proposals aim to keep compliance costs to a minimum for charities, while ensuring that transparency of charities' activities is increased to improve public confidence.

5. Consultation with small business: the Small Firms' Impact Test

We do not expect that this draft Bill will have an impact on small firms or microbusinesses. None of the provisions of the Bill are directed at businesses, unless they are attached to charities or engaged in fundraising for charities. We would welcome your views on this.

6. Competition Assessment

The regulation of charities as set out in the consultation paper is not expected to have any impact on competition. It will make charities' activities and finances more transparent, and clarify the legal requirements of charities. However it will not distort or restrict competition within markets in which charities operate.

7. Enforcement and sanctions

The proposals set out in the Bill and consultation paper include a number of criminal offences which will lead to a fine on conviction. These include: fines for organisations representing they are charities when they are not registered by the regulator; fines for charity stewards who breach their duties; fines for organising a public benevolent collection without a licence. Fines will be levied by the courts on charity stewards (charity board members) rather than on the charity's own funds. The maximum fine for each offence ranges from level 3 to level 5.

The Bill also provides OSCR with powers to take civil action against charities which it has reason to believe are engaging in misconduct. OSCR will be able to investigate charities, and can then take direct action to suspend charity stewards, freeze charity assets, or direct charities to stop particular activities. It will have similar powers in relation to non-charities which are representing themselves as charities, or which are in possession of funds collected for charity. OSCR will only be able to take these direct actions for a maximum of six months, after which it will be required to go to the courts for extension. There will be a right of appeal to an Appeal Panel (or direct to the courts) against any of these actions.

The enforcement of the self-regulatory scheme for charity fundraising will be established by the charities sector. The charities regulator will keep an overview of its operation and advise the Executive accordingly.

8. Monitoring and review

The regulator will be tasked with reviewing implementation of the legislation and regulations, and advising the Executive of any need for change. The Executive will review the impact of the legislation and associated regulations within ten years of it coming into force.

9. Consultation

This draft RIA has been developed after extensive consultation and dialogue with the charities sector. More than 40 meetings with stakeholders, in addition to the consultative work of the McFadden Commission and the Scottish Executive Justice Department, have furthered debate on the options and regulatory proposals set out above. It is now produced for comment, alongside the draft charities Bill and its accompanying consultation paper. It has been distributed to a range of key stakeholders, including national and local voluntary sector intermediary organisations, representative bodies of particular groups of charities, professional bodies, local authorities, and all those organisations which have responded to previous Executive consultations on charity law reform.

It is also available on the Scottish Executive website consultations page.

We would value your comments on this RIA, along with your responses to the consultation, **by 25 August 2004.**

Summary RIA

Option	Cost	Benefit
1 – No change	Continued threat to public confidence and therefore likely reductions in donations and volunteering	Fewer compliance costs
2 – Foundation of statutory regulation with additional self-regulation	<p>Training required for stewards, staff and volunteers</p> <p>Some additional time in completing and submitting annual returns, accounts etc</p> <p>Cost of developing self-regulation system (estimated by Buse Commission at £300,000 p.a. across the UK)</p>	<p>Improved public confidence</p> <p>More flexible regulatory system based on experience of practitioners, but safeguarding public interest</p>
3 – Statutory regulation only	<p>Training required for stewards, staff and volunteers</p> <p>Some additional time in completing and submitting annual returns, accounts etc</p> <p>Additional compliance costs in fundraising regulation</p>	Improved public confidence

Based on the cost/benefit analysis above, and on the views of consultees so far, we recommend option 2 – a foundation of statutory regulation of charities, further developed by self-regulation of charity fundraising.

The attached draft Bill and consultation paper have been prepared based on this approach.

We encourage you to submit comments on this Regulatory Impact Assessment, and any evidence on costs and benefits that may inform the legislative process.

Cost assumptions related to key Bill sections

Section	Provisions to:	Costs to SE	Costs to LAs	Costs to charity sector/others
1-2 Sch 1	Establish OSCR as an independent statutory body	£3 million currently estimated running costs per annum	None	None
3	Create a publicly accessible register of all bodies eligible to operate as charities in Scotland	As s1 above	None May have some benefits in terms of allowing local authorities to gather information efficiently for the processing of (PBC) licence applications	Should have a positive impact on charities' ability to raise funds from the public (currently charities in Scotland raise around £240 million from public donations) and from charitable trusts (recent estimates currently worth £60 million). Will create some additional administrative costs for charities subject to dual registration (impossible to quantify)
4-6	Require registration of all charities wishing to operate in Scotland	As s1 above	Local authority-managed charities will be required to register – some administrative costs	Some administrative costs – impossible to quantify, but likely to be inconsequential
7-8	Definition of charity – remove presumption of public benefit	It is possible that more non-charitable voluntary organisations will seek charity status when the law becomes clearer. It is also possible that some current charities will seek to convert to non-charitable forms. LAs are currently required to provide	Likely to be cost neutral. LAs are currently required to provide 80% relief on non-domestic rates for charities, the cost of which is covered by the Executive.	Likely to be cost neutral Some existing charities may no longer meet the requirements of the law and would therefore lose charitable tax reliefs. New charities may be encouraged to seek registration and gain these reliefs for the first time

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Section	Provisions to:	Costs to SE	Costs to LAs	Costs to charity sector/others
7-8 (cont)		80% relief on non-domestic rates for charities, the cost of which is covered by the Executive. The charity sector currently grows at the rate of around 3 per day. This rate of growth may increase after enactment, but it is impossible to determine how many new charities will have premises and therefore require non-domestic rates relief. It is not likely to be a substantially greater number than the growth rate under the present system.		
9-11	Empower OSCR to require a charity to change its name	As s1 above	Some administrative costs – impossible to quantify, but likely to be inconsequential	Some administrative costs – impossible to quantify, but likely to be inconsequential
12	Require that charities indicate their status on correspondence	As s1 above	Some administrative costs – impossible to quantify, but likely to be inconsequential	Some administrative costs – impossible to quantify, but likely to be inconsequential
18	Require charities to provide such information as OSCR requires, free of charge	As s1 above	Some administrative costs – impossible to quantify, but likely to be inconsequential	Some administrative costs – impossible to quantify, but likely to be inconsequential
19	Require charities to provide information to the public free of charge	None	This is already a requirement – however charities are currently able to re-coup their costs by charging. Will entail some administrative costs	This is already a requirement – however charities are currently able to re-coup their costs by charging. Will entail some administrative costs

Section	Provisions to:	Costs to SE	Costs to LAs	Costs to charity sector/others
23	Provide OSCR with a duty to co-operate with other regulators	As s1 above	Positive – OSCR will seek to work with local authorities and provide a useful single point of contact	Positive – should reduce the impact of the administrative burdens mentioned above
24-25	Empower OSCR to investigate any charity or body calling itself a charity	As s1 above	None	None likely – this just restates existing powers of the Crown Office. Some potential costs in additional training for stewards, staff and volunteers of charities in terms of the new requirements
27	Empower OSCR to suspend anyone running or working for the charity for up to six months	As s1 above	None	None
27	Empower OSCR to freeze bank accounts and restrict transactions entered into by a charity for up to six months	As s1 above	None	None
28	Create an offence for the body or person not to comply with such directions from OSCR under this part	As s1 above	None	None

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Section	Provisions to:	Costs to SE	Costs to LAs	Costs to charity sector/others
34-35	Make provision for the redistribution of money held for charities in dormant accounts	As s1 above	None	Positive – funds held for charities will be returned to the original charity or passed on to a charity with similar purposes.
36-37	Require charities to provide OSCR with annual accounts	None	None	None – charities are already required to produce accounts. Additional postage costs only.
36	Require audit or independent examination of accounts for larger charities (thresholds to be set out in regulations)	None	None	None – regulations will be based on existing accepted practice within the charity sector
36	Regulations will set out the form of the accounts and thresholds; these will rely on the ASB SORP for charities as appropriate	As s1 above	None	None – regulations will be based on existing accepted practice within the charity sector
38-42	Establish a new legal form for charities – the Scottish Charitable Incorporated Organisation	As s1 above	None	Positive – will provide charities with a simple, accessible legal form of incorporation without the complexity and expense of dual regulation by the company regulator. It is estimated that around 5000 charities currently also have company status.

Section	Provisions to:	Costs to SE	Costs to LAs	Costs to charity sector/others
43-49 Sch 2	Provide a free, ad-hoc appeals panel for appellants against OSCR's regulatory decisions	£150,000 - £200,000 per annum estimated to run panel	None	Positive – it will no longer be necessary to take out expensive court action to appeal a decision
50	Create broad legal duties for charity stewards	Potential loss of £10 million charitable tax reliefs for NDPBs which currently have charity status	Independence issue may mean that local authorities are no longer able to control their charitable arms.	None – duties aim to clarify existing case law and good practice
51-52	Disqualify certain categories of people from the management or control of a charity	As s1 above	None	None
53	Continue to provide for the regulation of designated religious charities; DRC status will be designated by OSCR	As s1 above	None	None – the provisions re-state the current situation
55-58	To provide cheaper and more accessible avenues for the re-organisation of charities	As s1 above	Positive – local authority-managed small charitable trusts (several hundred) will be easily amalgamated and more efficiently administered	Positive – small charitable trusts will have a cost-free route to amalgamate or wind up their activities. Will allow more efficient administration of charitable assets
59	End separate provision for charitable educational endowments	As s1 above	None	None

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Section	Provisions to:	Costs to SE	Costs to LAs	Costs to charity sector/others
60-61	Create an offence for a professional fundraiser or commercial participator to engage in fundraising for a charity without first having a written agreement with that charity	As s1 above	None	Cost neutral – based on existing good practice
62	Empower charities to prevent unauthorised fundraising in their name	None	None	Charities will incur costs in seeking injunctions – however, OSCR will have a power to do this by proxy
63	Regulations will require professional fundraisers and commercial participators to inform potential donors of the extent to which the cause or charity will benefit from their donation	As s1 above	None	Regulations will set out the form of the statement required. May require additional training of fundraisers, and may restrict the fundraising activities available to charities. However it will promote public confidence and may increase willingness to give
64	Provide powers for Scottish Ministers to regulate charity fundraising by establishing statutory codes of practice if they feel this is necessary.	As s1 above	None	May lead to increased administrative costs and training requirements

Section	Provisions to:	Costs to SE	Costs to LAs	Costs to charity sector/others
65-67	Refine the system of licensing public charitable collections by clarifying the definition of 'public place' and 'public benevolent collection'	As s1 above	May have some impact in terms of widening the scope of local authorities' powers to license PBCs – additional resources may be required to administer the system and deal with returns	Neutral – may impact on face to face (direct debit) fundraising by bringing it into the regulatory scope for the first time; may increase public confidence and willingness to give. Will have no effect on charity shops and collections of goods
68	Clarify the existing 'exempt promoters' system by establishing a 'designated national collectors' system to be designated by OSCR	As s1 above	Will aid local authorities to manage this system by clarifying its purpose and providing advice through OSCR	Positive – the system as clarified should allow national collectors to organise PBCs efficiently without impacting negatively on the capacity of collecting places for local charities
73-75	Provide for wider powers investment for trustees	As s1 above	None	Neutral – will provide wider powers of investment, meaning that trusts' investment income will be more closely linked to the general state of the investment market

6. Equality considerations

An initial response to the Scottish Parliament Mainstreaming Equality Checklist

1. Have you considered the equal opportunities impact of each section of your Bill?
2. Have you asked relevant equality groups whether they feel there are any issues which will be of relevance to them?
3. Have you considered issues not highlighted by this checklist which are likely to arise as part of the scrutiny of the Bill, such as those in the Scottish Parliament's mainstreaming equality implementation notes?
4. Have you considered whether there should be an overarching equality statement as part of the Bill?
5. Have you properly reflected the Bill's treatment of equal opportunities in the policy memorandum's equality statement?

Initial response

We have considered each section of our Bill, and feel that there are no obvious equal opportunities impacts.

The Bill aims to develop a proportionate, consistent regulatory framework for all charities operating in Scotland. It should not have an impact on particular equalities groups.

It is not possible at this stage to fully identify the range of equalities organisations which currently are (or could be) charitable. However, evidence suggests that organisations led by and on behalf of minority and disadvantaged groups can have difficulty accessing charitable status. We expect that this position will be substantially improved by a more modern, transparent approach to the definition of charity and to charity regulation.

We expect the charities regulator to consider equal opportunities in all its decisions, but do not feel there is a need for an overarching equality statement in this Bill.

This consultation paper has been circulated to a range of equalities organisations. We would welcome your views on the suggested provisions for the Bill, and any potential impact they may have on equal opportunities.

7. Glossary of terms

Charity stewards	Suggested new term for the board members or trustees of a charity
Commercial participators	A normal business operation which undertakes a promotion from which a good cause will benefit (eg a charity's logo appears on a cereal packet, and a proportion of the price of the packet goes to the charity)
DRC/Designated religious charities	Religious charities meeting the criteria for exemption from some accounting requirements (previously known as 'recognised religious bodies')
NDPB	Non-Departmental Public Body
NMD	Non-Ministerial Department
OSCR	Office of the Scottish Charity Regulator
PBCs	Public Benevolent Collections (licensed street collections for good causes)
Professional fundraisers	A fundraiser who carries on or is employed by a fundraising business (not directly by a charity)
SCIO	Scottish Charitable Incorporated Organisation (a new legal form and constitutional vehicle for Scottish charities)

8. The Scottish Executive Consultation Process

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body. Consultation exercises may involve seeking views in a number of different ways, such as public meetings, focus groups or questionnaire exercises.

Typically, Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the area of consultation, and they are also placed on the Scottish Executive web site (www.scotland.gov.uk) enabling a wider audience to access the paper and submit their responses. Copies of all the responses received to consultation exercises (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4552).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

If you have any comment about how this consultation exercise has been conducted, please send them to:

Richard Arnott
Head of Charity Law Team
Scottish Executive Voluntary Issues Unit
Area 2-G, Victoria Quay
Edinburgh EH6 6QQ
Email: richard.arnott@scotland.gsi.gov.uk

9. Summary of pre-Bill consultation activity

We would like to thank the wide range of individuals and organisations who gave up their time to help us develop this draft Bill and consultation paper.

Bill reference group

We held seven meetings of the reference group while drafting the Bill. The group was made up of:

Office of the Scottish Charity Regulator (*Jane Ryder*)
Home Office Active Communities Unit (*Richard Corden*)
Scottish Council for Voluntary Organisations (*Martin Sime*)
McFadden Commission (*Jean McFadden*)
Scottish Charity Finance Directors Group (*Richard Hellewell*)
Institute of Fundraising Scotland (*Maureen Harrison*)
Oxfam in Scotland (*Mhairi Hearle*)
CVS Fife (*Alison Cameron*)
Scottish Consumer Council (*Martyn Evans*)
Dundee University Charity Law Research Unit (*Patrick Ford*)

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Specialist consultation meetings

Between December 2003 and May 2004, we held around 40 specialist meetings dealing with particular sections of the bill:

Issue	Stakeholders
accounting provisions	Reference group representatives
appeals process	reference group
Charitable Incorporated Organisation	SCVO; Dundee University Charity Law Research Unit
Charitable Incorporated Organisation	Law Society, ICAS, OSCR, SCVO, MDNS, Dundee University, Institute of Fundraising
charity governance	reference group
Charity regulation – jurisdiction issues	Reference group members
consultation process	Scottish Civic Forum
co-operatives	Scottish Federation of Housing Associations, Association of British Credit Unions Ltd
co-operatives	Co-operation and Mutuality Scotland
definition of charity	Varied delegates invited by SCVO
definition of charity	reference group
dual regulation	reference group
dual regulation	SFHA, Scottish Environment Link, reference group representatives
dual regulation	Charity Commission
form of OSCR	Varied delegates invited by SCVO
form of OSCR	reference group
functions of OSCR	reference group
fundraising	Institute of Fundraising, Public Fundraising Regulatory Association
fundraising	Institute of Fundraising Public Affairs Committee
fundraising	Reference group representatives
fundraising	Buse Commission representatives
fundraising	reference group
fundraising/trading	Association of Charity Shops

general	voluntary sector intermediaries network
general	Institute of Chartered Accountants Scotland
general	Law Society of Scotland
general	Scottish Council for Independent Schools
general	Third Sector Policy Officers' Network
general	Scottish Interfaith Council
general	Scottish Council of Jewish Communities
general	Debate among delegates at Momentum Charity Law Seminar, The Gathering
general	CoSLA and local authority representatives
general	Learning Link members
general	Members of Scottish Environment Link
general/charity governance	Management Development Network Scotland
OSCR powers – governance and re-organisations	reference group
OSCR powers – mismanagement and misconduct	reference group
outline of bill	reference group
principles of public benefit	reference group
public charitable collections	SOLAR, Dundee University Charity Law Research Unit, reference group representatives
public charitable collections	Association of Chief Police Officers Scotland
Public charitable collections	Follow-up, including CoSLA representatives and reference group members
registration	reference group
regulation of fundraising	Varied delegates invited by SCVO
religious organisations	Church of Scotland Trust/Scottish Churches Committee
trading and campaigning issues	Oxfam GB
trading and campaigning issues	Cancer Research UK Scotland

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