

Review of Charity Regulation

Consultation

April 2024

Charity regulation review Consultation paper and questions

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Overview

1. This consultation gives the Scottish Government the opportunity to get opinions on whether a review of charity regulation is needed and if so what the purpose and parameters of a review should be.
2. You can respond to this consultation online via [Citizen Space](#).
3. After the consultation is closed, we will publish responses, where we have been given permission to do so.
4. The consultation was published on 29 April 2024 and closes at midnight on **Monday, 22 July 2024**.
5. We will analyse the consultation responses and publish a report. The results from this consultation will help us decide what the next steps should be. Once a decision has been made, we will publish it.
6. We are running webinars during the consultation period. Please email charityreview@gov.scot if you want more information about the webinars.
7. If you have any questions, comments or concerns about this consultation, please email charityreview@gov.scot.

Completing the consultation

As you complete your response, each page will provide the option to 'Save and come back later' at the bottom. This means you can save your progress and return to the consultation at any time before it closes. If you don't use this feature and leave the consultation midway through, your response will be lost.

Once you have submitted your response, you can enter your email address to get a pdf copy of your answers sent to you.

On the 'About You' page at the end of this consultation, organisations will have the opportunity to tell us more about their work and/or how their response was informed.

After the consultation has closed there will be a few months delay before any responses are published. This is because we must check that any responses to be published abide by our [Terms of Use](#).

An analysis report will usually be published some months after the consultation has closed. This report will summarise the findings based on all responses submitted. It will be published on the [Scottish Government website](#) and you may be notified about it if you choose to share your email address with us. You can also [join our consultation mailing list](#) where we regularly list newly published analysis reports (as well as new consultations).

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.

Why have a consultation?

We have launched this consultation because in the past people told us that they think there should be a review of charity regulation. We want to understand if people still feel that way and if so, what you think should be the **purpose and parameters** for a review.

In 2019 we ran a [consultation](#) about proposals the Scottish Charity Regulator (OSCR) had made on improvements to the [Charities and Trustee Investment \(Scotland\) Act 2005](#). In response to that consultation some people told us that they wanted a wider review of charity regulation.

This consultation asks 10 short questions about a review. It is split into three sections:

1. The need for a review and the purpose of a review
2. The parameters for a review - What should it cover and not cover?
3. Technical areas for review

You do not need to answer every question but, the more information we have, the better we are able to understand what you feel is needed.

Technical areas for review

People have told us that some technical areas of charity regulation would benefit from being changed, raising three specific issues which we have already committed to look at.

These are:

- A. reorganisations of statutory and Royal charter charities
- B. incorporation to a Scottish Charitable Incorporated Organisation (SCIO)
- C. a review of audit thresholds.

More information about these topics can be found in the **ANNEX**.

These are long standing and complex issues for parts of the charity sector. We already have a lot of detail about them and know that they need to be looked at. We plan to do this in a 'technical workstream', which can be progressed separately from a review of charity regulation. The consultation asks if there are any other areas you think we should include in this technical strand of work.

Consultation questions

Purpose for a review

1. Should there be a review of charity regulation?

- Yes
- No
- Don't know

2. Please explain why you think there should or should not be a review of charity regulation.

3. If a review of charity regulation is undertaken, which of the following should be the purpose of the review (choose one):

- To assess the effectiveness of current charity regulation in meeting the future needs of the sector
- To review the Charities and Trustee Investment (Scotland) Act 2005 - exploring if the Act is doing what it set out to do and if any changes are required
- Don't know
- Other – please specify

4. Do you think you or your organisation will have capacity to contribute views to a review process in the next 12 months?

- Yes
- No
- Don't know

Parameters for a review

5. If a review of charity regulation is conducted, what topics should it cover and why?

6. What topics should it not cover, and why?

7. In the past consultations some people have suggested aspects of charity regulation they think should be reviewed. These are listed below.

Charitable purposes

There are 16 charitable purposes set out in [section 7\(2\) of the 2005 Act](#). Each charity must have at least one of these purposes in their written constitution. The purpose(s) make clear what the charity has been set up to achieve, its broad aims.

Public benefit

Public benefit is the way a charity makes a positive difference to the public (either in general or to a specific section) through the activities it carries out when advancing its charitable purposes. This is set out in [Section 8 of the 2005 Act](#).

Charity trustee duties

All charity trustees have legal duties and responsibilities under charity law. A duty is something that you must do, and all the duties must be met. The duties are set out in [Section 66 of the 2005 Act](#).

More information on these aspects of charity regulation and other requirements can be found in OSCR's guidance: [OSCR | Guidance and forms](#).

7 A. **Charitable purposes:** Should this aspect of charity regulation be reviewed?

- Yes
- No
- Don't know

7 B. **Public benefit:** Should this aspect of charity regulation be reviewed?

- Yes
- No
- Don't know

7 C. **Charity trustee duties:** Should this aspect of charity regulation be reviewed?

- Yes
- No
- Don't know

8. Is there anything else you think should be included in a review of charity regulation?

Please explain what and why

Technical areas

There are three technical topics that have been identified to form part of a 'technical workstream', separate from any wider review of charity regulation. Details of these topics can be found in the **Annex**.

Reorganisation of statutory and Royal charter charities

9 A. Should this technical topic be reviewed?

- Yes
- No
- Don't know

Incorporation to a Scottish Charitable Incorporated Organisation (SCIO)

9 B. Should this technical topic be reviewed?

- Yes
- No
- Don't know

Audit income thresholds

9 C. Should this technical topic be reviewed?

- Yes
- No
- Don't know

10. Are there any other technical issues you think should be added to the technical workstream?

About you

Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will still take account of your views in our analysis but we will not publish your response, quote anything that you have said or list your name. We will regard your response as confidential, and we will treat it accordingly.

To find out how we handle your personal data, please see our [privacy policy](#). By clicking submit you agree to our privacy policy.

11. What is your name?

12. Are you responding as an individual or an organisation?

(Required)

Individual

Organisation

13. What is your organisation?

If responding on behalf of an organisation, please enter the organisation's name here.

If you are responding as an individual you can leave this blank.

14. Further information about your organisation's response

Organisations may use this space to provide additional context for their response. This could be information about, for example:

- any research your organisation undertook to inform the response
- any engagement with your members or audience undertaken to inform the response

This is optional.

Please add any additional context

15. If you are responding on behalf of a charity what was the charity's income for last year? Please tick one:

- Not Known
- £0 to £5,000
- £5,000 to £9,999
- £10,000 to £24,999
- £25,000 to £49,999
- £50,000 to £99,999
- £100,000 to £249,999
- £250,000 to £499,999
- £500,000 to £999,999
- £1m to £10m
- £10m+

16. The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

(Required)

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations only:

The option '*Publish response only (without name)*' refers only to your name, not your organisation's name. If this option is selected, the organisation name will still be published.

If you choose the option '*Do not publish response*', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

17. Do you consent to Scottish Government contacting you again in relation to this consultation exercise?

(Required) Yes No

18. What is your email address?

If you would like to be contacted again in future about this consultation, please enter your email address here. You will also need to give permission to be contacted in the question above.

Your email address will never be published.

(Required) Email

19. I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

[Privacy Policy](#)

(Required) I consent

Annex

Technical strand topics

A. Charity reorganisations for statutory charities

Reorganisation allows often older charities to make changes to become more effective in a number of ways. For the small number of charities established under Royal charter or an Act of Parliament or Act of the Scottish Parliament the process of reorganisation can be complex.

Changes made in Section 14 of the Charities (Regulation and Administration) (Scotland) Act 2023 have clarified the position where endowments are held but did not address wider stakeholder concerns about the reorganisation of these charities, as opposed to just their endowments.

A Royal Charter charity must still turn to the Privy Council for authority to reorganise and the stakeholders have advised that the Privy Council procedures in this area are 'dauntingly time-consuming and expensive'. In the case of charities established by an Act of Parliament, they may have no alternative but to proceed with a private Bill in the Scottish Parliament, which is not always a good use of the charity's money or the Parliament's time.

B. Incorporation to a Scottish Charitable Incorporated Organisation (SCIO)

Incorporation means that the charity as a legal entity can enter into contracts in its own right and the charity trustees do not have the same liability if something goes wrong. In recent years incorporation is often a requirement for funding. This area can be problematic, particularly for smaller charities. A change from an unincorporated form to an incorporated form with limited liability provides protection for trustees and is recommended when employing staff or owning property.

For charities the incorporation process, sometimes called ‘change of legal form’ means they must a) set up a new incorporated charity, usually a SCIO, b) transfer all assets and liabilities from the unincorporated charity to the new charity and c) wind up the unincorporated charity. The OSCR processes for establishing new SCIOs, registering other incorporated bodies as charities, or winding up the old charities are not necessarily the issue here. It is often the transfer of all assets and liabilities from the old charity to the new charity which can be time consuming and expensive. Some charities who would benefit from the SCIO form withdraw from the process due to these complexities.

Around 54% of charities across Scotland have incomes of less than £25,000¹. As a result, they have limited capacity to access legal advice.

C. Review of audit thresholds

We have become aware that charities are finding it increasingly difficult to appoint an auditor. At the moment the evidence is anecdotal. However, we believe that over time there is a risk that charities requiring an audit will struggle to appoint an auditor, meaning that they would be unable to file annual accounts with OSCR to comply with the Charities Accounts (Scotland) Regulations 2006 (the 2006 Regulations) and the 2005 Act.

The gap between the audit threshold for Scottish charities in the 2006 Regulations and the Companies Act 2006 audit income threshold is now considerable (£500k compared to over £10m). This, combined with economic conditions and increased regulatory requirements, means that it can be difficult for audit registered firms to offer audit services to charities for a fee that is financially viable for the firm and affordable to the charity.

The audit income threshold for charities in Scotland and Northern Ireland is currently £500k, in England and Wales the threshold is higher,

¹ [OSCR | Sector Overview](#)

currently £1m. Some stakeholders have publicly called for the threshold to be raised to £1m. The Scottish Charity Sector in broad terms has a lower income than England and Wales, with only around 1,500 Scottish charities currently subject to the audit thresholds.

OSCR have advised that the number of charities falling above the gross income threshold of £500k for an Audit has remained relatively stable. This suggests that the threshold is not the root cause of the issues, and therefore raising the threshold might not be the best or only intervention available.

Raising the threshold would have a knock-on effect of creating more demand for independent examinations (required where an audit is not), where there is already a shortage of independent examiners. An independent examination is a form of external scrutiny of the accounts which is less rigorous than an audit. However, if the threshold were raised the charities likely to move out of the audit requirement would be likely still to require a professionally qualified person to carry out the independent examination. So, a change of threshold would not in itself reduce the demand on professional accountancy firms and individuals.

The audit thresholds are set out in the Charities Accounts (Scotland) Regulations 2006. Any change to the threshold would need to be made by amendment regulations, as opposed to it being a matter of discretion for OSCR. We understand from OSCR that data on the Scottish Charity Register indicates that an increase in the audit threshold to £1 million would bring around 500 charities out of the current audit requirements and place them under independent examination requirements.



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