

Consultation on Registration and Licensing of Animal Sanctuaries and Rehoming Activities in Scotland

Response from the Scottish Charity Regulator

1. The Scottish Charity Regulator

The Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) as a Non-Ministerial Department forming part of the Scottish Administration. OSCR is the registrar and regulator of charities in Scotland. There are currently over 24,000 registered charities in Scotland.

2. Consultation response

Of the 24,000+ charities registered in Scotland 683 have the charitable purpose 'The advancement of animal welfare'. However, this does not necessarily mean that all 683 charities will be advancing animal welfare on a regular basis. Some of these charities will be grant giving charities whose purposes span all 15 of the charitable purposes in the 2005 Act.

There are 121 charities with 'the advancement of animal welfare' as a sole charitable purpose and the 'advancement of animal welfare' is one of the least commonly encountered charitable purposes.

Overall, there are 3% of charities working to advance animal welfare, this percentage has been consistent over the last 10 years.

When we receive applications to become a charity with this purpose we expect the organisation to be able to demonstrate that they have the facilities, expertise, and equipment to provide the appropriate level of care for the animals in question. This includes appropriate licences. [More about our consideration of this charitable purpose can be found in our guidance.](#)

OSCR's interest in animal welfare extends beyond the charity application stage. The number of concerns we receive about charities with animal welfare as a purpose is low, with 77 reported since 2015, from a total of 1,256 concerns overall. These involve 51 individual charities. Although only 6% of concerns involve charities with this purpose, it is higher than we might expect when considering they make up only 3% of charities on the Scottish Charity Register. Concerns reported about the Scottish Society for the Prevention of Cruelty to Animals account for around one in eight concerns where animal welfare is a purpose.

OSCR's role in investigating misconduct and mismanagement in charities is set out in our [Inquiry Policy](#). It centres on areas where charity trustees, the persons in general management and control of a charity, breach the duties set out in section 66 of the 2005 Act, their overarching duty being to act in the interests of the charity. We would not usually deal with concerns about service delivery by a charity, but where a charity has not met the legal or regulatory standards applicable to it we may need to use our inquiry powers to see whether the charity trustees have met their duty to act with care and diligence.

In our experience, therefore, clear, consistent standards in animal rescuing and rehoming activities would be very beneficial. Animal welfare is a considerable area of concern for the public, as reflected in the proportion of concerns we receive. Having a clear route for the public to raise their concerns about animal welfare will be beneficial.

The consultation document sets out the Scottish Governments proposed thresholds for exemption, registration and licensing of persons and premises. In general a tiered approach to registration and licensing seems appropriate and mirrors our own proportionate approach to regulation. The wording of this section is not clear, although we understand that being a registered charity will automatically require a licence to be held regardless of the number of animals. It is not clear from the consultation document why charities are proposed to be subject to a more stringent licensing requirement than other organisations of a similar size providing similar services.

The licensing requirement may have the unintended consequence of putting organisations off registering as a charity where their level of activity is low enough for them as a non-charity to avoid the licensing requirement. The requirement may also cause existing charities to request removal from the Scottish Charity Register under section 18 of the 2005 Act. In either case such organisations would neither be licensed under the proposals or regulated as charities, resulting in less regulatory oversight of these organisations than would be the case at present.

The wording of the consultation refers to 'registered charities'. Sections 13 and 14 of the 2005 Act provide a definition of a 'registered charity' and it is unclear whether this definition has been factored into the consultation. This is important as it has implications for organisations outwith Scotland, which may in certain circumstances be entitled to refer to themselves as charities even though they are not on the Scottish Charity Register. OSCR has powers to deal with organisations misrepresenting themselves as charities.

Who or what is to be licensed or registered?

The consultation mentions exemption, registration and licensing of persons and premises. It would be helpful to have a number of points clarified here:

- Is the policy intention here to license or register the place where the activity happens or the people in charge of it?
- Does 'persons' here refer to natural persons or also to legal persons such as companies or other incorporated entities such as Scottish Charitable Incorporated Organisations (SCIOs)?
- If it refers only to natural persons, is the intention that all persons involved in providing an animal sanctuary or rehoming agency would require to be registered or licensed, or would one person be sufficient? It would be helpful in the case of charities to consider further how this requirement would sit with the legal duties of charity trustees, and particularly their collective responsibility to act in the interest of the charity.

The consultation also suggests that part of the registration/licensing criteria would be a 'fit and proper persons test'. This seems sensible in respect of those disqualified in respect of other animal welfare activities. We would highlight that the following categories of people are in any case disqualified from becoming charity trustees of relevant charities:

- someone with an unspent conviction for dishonesty or an offence under the 2005 Act
- someone who is an undischarged bankrupt or has a [Protected Trust Deed](#) to pay off debts with creditors
- someone who has been removed under either Scottish or English Law from being a charity trustee
- someone who is disqualified from being a company director.

3. Conclusion

OSCR welcomes the proposals to enhance animal welfare standards in Scotland and provide consistency in rescuing and rehoming activities. Given the potential impact on some charities and overlap with charity regulation it is important that OSCR is involved as this progresses.

We are content for the information provided to be released in full, including contact details. Should you wish to discuss any aspect of the response please contact:

Caroline Monk, Engagement Manager (Policy and Guidance)
caroline.monk@oscr.org.uk
01382 346839