

Consultation on proposed draft Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations

Response from the Scottish Charity Regulator

1. Background

1.1 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 charities registered in Scotland.

2. Consultation response

2.1 Make-up of the Scottish Charity sector

OSCR currently regulates over 24,000 charities, with landowning charities of varying types including Universities, conservation charities, charities holding land under the community ‘right-to-buy’, trusts and churches. It is not possible to identify how many of the 24,000 charities own land or manage in Scotland. Land will often have been held in trust by charities continuously for long periods and may therefore be less likely to appear in the Land Register.

The main types of legal form or structure for Scottish charities are:

Legal form	Percentage of charities
Unincorporated associations	46%
Companies	20%
Trusts	14%
Scottish Charitable Incorporated Organisation (SCIOs)	14%

Of the 24,000 charities, 52% have an income of less than £25,000, and the vast majority of charity trustees serve unpaid. While there are large charities which hold significant amounts of heritable property, more typical are the village halls, churches

and scouting and guiding associations, which hold one or two buildings where charitable activities are carried out.

2.2 Decision making in charities

In charity law the charity trustees are the people in management and control of the charity. In their dealing with charity land all charity trustees are under a general duty to act in the interests of the charity and to ensure the charity operates in a manner consistent with its purposes (section 66 of the 2005 Act).

2.3 Consultation questions

Our response focuses on the questions relating to Parts 3 (Trusts) and 4 (unincorporated associations) of Schedule 1, as two main legal forms for Scottish charities. However, we do have some comments regarding offences and transitional arrangements.

Offences and transitional arrangements:

It is expected that owners and tenants of land, and their associates, will fulfil their duties under the regulations from 1 April 2021 and may be subject to criminal offences if they have not done so by 1 October 2021.

We are concerned that it may well take some charities far longer than 6 months to establish which individuals are required to register, village halls being a prime example. In addition 60 days to update the register seems like a very short time period where criminal sanctions are involved.

We understand that there is an intention to be proportionate when enforcing the regulations, however, we are mindful that the regulations could impact small 'asset rich, cash poor' charities disproportionately and in a manner that does not help to achieve the policy drivers for the register.

We are concerned about likely levels of awareness and understanding of this issue among charity trustees and the charitable sector generally. Deciding who has a controlling interest in land may not be particularly straightforward for many charities. Clear guidance and communications will be critical, with examples to support charities. If not, compliance will be an issue.

Trusts:

The consultation document states that trust deeds are not publicly available. This is not the case if the trust is also a charity. Under section 23 (1)(a) and (b) of the 2005 Act, anyone has the right to request from the charity directly:

- a copy of the charity's latest statement of accounts

- a copy of the charity's constitution.

The section 23 requirements are applicable to all charities regardless of their legal form.

We understand that in the case of Trusts an 'associate' includes anyone who has the right to appoint or remove trustees. In some Trusts the power to appoint or remove trustees may be vested in another body, such as a Local Authority, or an individual, such as the trustor. In instances where the power to appoint is held by another body that power may be unknown to the body. The practicalities of fully implementing the Register in these cases is likely to be challenging.

Unincorporated associations:

We understand that the regulations seek to make the concept of an associate and the registering of associate details more manageable for the many small-unincorporated bodies who will be required to register. Part 4, paragraph 11 of the draft regulations states that:

'... a person is responsible for the general control and management of the administration of a body if they hold an office or position (such as chair, treasurer or secretary, however that may be described).'

Limiting control and management to mean 'office holders within the management committee' would reduce the burden of reporting for some. However, for charities this does not reflect the situation in charity law where all of the charity trustees are in management and control, regardless of any title they hold. In the case of a management committee, every member of the committee is a charity trustee and the trustees as a whole are collectively responsible for the land and should have equal control over decisions taken in respect of that land.

Singling out office holders such as the chair, treasurer or secretary may make the administration of registration and updating easier for some charities; however, it may undermine the educational work OSCR undertakes to ensure that charity trustees understand that no one position within a trustee board carries more weight or importance and all trustees are equally responsible for the decisions taken. In addition OSCR takes a broad view that where possible there should be a healthy turnover of office holders within a board to ensure charities have the right mix of skills and experience.

3. Conclusion

We understand the aim of improving transparency in land ownership and the intentions behind the regulations. However, we would be concerned if questions of proportionality were to be overlooked in the drafting of the regulations. We would particularly stress the size and income profile of the Scottish charity sector.

As stated in our previous responses to consultation, the addition of a field on the register which indicates that the land is held on behalf of a charity, with details of that charity (or a link to the entry in the [Scottish Charity Register](#)) would further increase transparency and public understanding of land ownership.

We would also highlight that OSCR has been actively pursuing modernisation of the 2005 Act with Scottish Government. One of the changes is for OSCR to have a legal duty to publish charity trustee names on the Scottish Charity Register to enhance transparency and accountability in the charity sector. Such a change would potentially allow some of the information required from charitable trusts and unincorporated bodies for the RCI to be available direct from the charity regulator.

OSCR has welcomed the opportunity to respond to this consultation and looks forward to the development of the regulations and associated guidance. **Given the potential impact on many smaller charities it is crucial that Scottish Government continues to engage with OSCR and the sector as the legislation develops.**

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:

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