

Consultation on Fifth Money Laundering Directive (5MLD)

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. We are independent of Scottish Government and report directly to the Scottish Parliament every year.

We are the independent regulator and registrar for over 24,500 Scottish charities including community groups, religious charities, schools, universities, grant-giving charities and major care providers. Our work as Regulator ultimately supports public trust and confidence in charities.

2. Consultation response

Our response focuses on Chapter 9 of the consultation ‘Trust registration service’ (TRS), and in particular the extension of the register to charitable trusts.

2.1 Scottish Charity Sector

Of the 24,500 charities in Scotland, 52% have an income of less than £25,000 p.a. and the vast majority of charity trustees serve unpaid. 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%

Existing regulation already provides for a greater degree of transparency for charities: under section 23 of the 2005 Act, charities are required to supply a copy of

their governing document and/or the latest examined or audited accounts to anyone who makes a reasonable request for them. We also publish the accounts of all SCIOs and of other charities with an annual income of at least £25,000 on the [Scottish Charity Register](#).

In addition, OSCR is currently seeking changes to primary legislation to allow the publication on OSCR's website of charities full annual report and accounts and a publicly available list of charity trustees. This will increase the transparency and accountability of Scotland's charity sector and contribute to our vision of 'charities you can trust and that provide public benefit'. These proposals were the subject of a recent [Scottish Government consultation on Scottish Charity Law](#).

2.2 Charitable Trusts¹

Charitable trusts make 14% (3498) of the total number of charities registered in Scotland. 133 are cross-border charities, registered with OSCR and the Charity Commission for England and Wales.

The majority of charitable trusts registered in Scotland (3222) have an income of less than £50k, over a third of trusts have an income of less than £5k (1114).

Unlike the other UK charity regulators (Charity Commission for England and Wales and Charity Commission for Northern Ireland), OSCR does not currently hold a register of all the charity trustees that we regulate. We understand that much of the information required by the TRS could be held in a register of charity trustees. Giving OSCR the power to create a register of charity trustees is one of the 10 proposals in the [Scottish Government consultation on Scottish Charity Law](#).

2.3 Definitions

In order to obtain charitable status a body must provide public benefit to advance its charitable purposes; once a charity is on the Scottish Charity Register it is subject to our regulation (section 8 of the 2005 Act). The assets of a charity must only be used for the charitable purposes for which the charity is established. It is a charity's beneficiaries (either the public at large or a section of it) who benefit from the charitable activities. In many cases narrowing down individuals that benefit directly from a charitable trust maybe particularly onerous, if not impossible.

We understand that Article 31 of 4MLD says that for every trust which a Member State is required to register, information should be collected on the 'beneficial owners' of the trust. This includes information on:

¹ Figures correct as of 29 May 2019

- the settlor
- the trustee
- the protector(s) (if any)
- the beneficiaries or class of beneficiaries
- any other natural person exercising effective control of the trust.

It is unclear how some of these categories will translate to charitable trusts, or what information will be required to be provided. For example, while some charitable trusts will have defined beneficiary groups, others will be for the public more generally and therefore it may be difficult for some charitable trusts to provide the necessary information regarding their beneficiaries.

We note in the consultation that 'settlor' is detailed as the person who expressly creates the trust. In Scotland a 'settlor' is more commonly referred to as a 'truster' and to avoid confusion it would be useful if this was made clear in any guidance. Through our casework we are aware that identifying individual Trustees of a charitable trust can be challenging. Many older trust deeds appoint ex-officio trustees, some of these positions no longer exist, in other cases the individual office holder is unaware of their trustee role, or unwilling to fulfil it. Examples of these are illustrated in our [Guidance for Village Halls Governed by a Deed of Trust](#).

2.4 Proportionality and regulatory burden

We welcome that point 9.6 of the consultation document recognises that UK trusts present a low risk of money laundering and anti-terrorism financing, and that government wishes to ensure the regime is applied proportionately. We would highlight that money laundering and terrorist financing figures are even lower for Scotland.

We are concerned about the regulatory burden and multiple reporting requirements that could be placed on very small charities. We would welcome discussion with government on how they can implement the requirements in a proportionate manner that recognises the size and scale of Scottish charitable trusts.

We understand that government intends to mirror existing registration criteria in relation to land and property. We would highlight the current Scottish Government proposals for a [Register of Controlling Interests](#) under the Land Reform (Scotland) Act 2016 and the potential for another layer of reporting for charitable trusts who hold title to land (many of them).

2.5 Compliance

We are concerned about likely levels of awareness and understanding of the TRS among charity trustees of charitable trusts, especially small trusts with limited access

to provisional advice. Clear guidance would be required with examples to support charities. If not, compliance could be an issue.

A lack of awareness of the Directive in the charity sector in Scotland is likely to cause confusion, frustration and ultimately non-compliance. Promotion and communication will be paramount, as will guidance and advice. As indicated above the information required for the TRS will not always be clear or readily available in some charitable trusts.

3. Conclusion

OSCR has welcomed the opportunity to respond to this consultation and looks forward to the development of the legislation.

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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