

Charities (Regulation and Administration) (Scotland) Bill

Data Protection Impact Assessment

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Version date: 8 November 2022

The purpose of this report is to assess the potential for privacy impacts and GDPR implications associated with proposals that make up the Charities (Regulation and Administration) (Scotland) Bill (the Bill).

This document will also provide an evaluation of how the protection of personal data has been considered and demonstrate how the rights to privacy and confidentiality of the users are appropriately protected through mitigations.

The Bill presents a package of proposals aimed at increasing transparency and accountability in charities, improving the Scottish Charity Regulator's (OSCR's) powers and bringing Scottish charities legislation up to date with key aspects of charity regulation in England, Wales, and Northern Ireland. Although some proposals are more closely linked than others, they are all essentially independent therefore the choice in each case was simply whether to include the proposal in the Bill or not. Each proposal has been examined as a separate entity to ensure that the full range of considerations for each has been considered as part of this assessment

The text of the proposed legislation/amendment is attached at Annex A.

The Bill will enhance transparency and accountability in Scottish charities and increase regulatory powers for OSCR. The Scottish Government has been actively working on a review of Scottish charity law since January 2019. The review has focused on the proposals put forward by OSCR. The Bill does not seek to revisit the fundamental principles of charity law, but to update and strengthen existing charity regulation.

The proposals identified by OSCR broadly focus on increasing transparency and accountability by making information more accessible to maintain public trust and confidence in charities and improving OSCR's powers to deal with misconduct, bridging some of the gaps between Scots charity law and charity law in the rest of the UK. Consultations in 2019 and 2021 showed strong support for all 10 proposals and stakeholders are keen to see changes brought forward. As a result of the consultations two more proposals have been added to the drafting instructions – Introduction of a Record of mergers and a list of technical amendments to the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act).

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During the drafting process of the Bill the decision was made to remove one of the original 10 proposals relating to the reorganisation of charities established under royal charter, warrant or enactment. This proposal will be considered for future review.

It is important to note throughout this assessment that a lot of what the Bill is doing is conferring functions on OSCR which, as the regulator, is bound by section 1(9) of the 2005 Act¹ to have regard, in the exercise of its functions, to:

- The principles under which regulatory practice should be proportionate, accountable, consistent, transparent, and targeted only at cases in which action is needed, and
- Any other principle appearing to OSCR to represent best regulatory practice.

This overarching duty means that OSCR is bound by law to act proportionately and to target its resources only at the cases most needing action.

This Data Protection Impact Assessment (DPIA) works in conjunction with the [Article 36\(4\) ICO](#) consultation form submitted in advance of this, as the proposal requires consultation with the Information Commissioner's Office (ICO).

¹ [Charities and Trustee Investment \(Scotland\) Act 2005 \(legislation.gov.uk\)](#) – Section 1

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1. Contact and schedule information

1.1 SG department: Third Sector Unit

1.2 Contact email: Caroline.monk@gov.scot

1.3 Data protection support email: dpa@gov.scot

Data protection officer: dataprotectionofficer@gov.scot

1.4 Is your proposal primary legislation, secondary legislation, or other form of statutory measure? Primary legislation

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2. Introductory information

There are 11 proposals that make up this Bill. Each proposal requiring relevant DPIA analysis has been analysed individually below. The full list of proposals can be found at [Annex A](#).

2.1-Summary of proposal: A requirement on OSCR to publish the statements of account for all charities in the Scottish Charity Register

All charities in Scotland are under a legal duty to prepare a statement of accounts, which they then submit to OSCR annually. There is currently no legal requirement for accounts to be published on the Scottish Charity Register (the Register), although charities are required to supply a copy to anyone who requests it. Publishing statements of account for every charity on the Register would enhance transparency and accountability in the sector.

2.2-Description of the personal data involved:

(Charity Trustee) first name

(Charity Trustee) last name

2.3 Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups, or categories of persons? -None

2.4 Necessity, proportionality, and justification

The proposal will enable OSCR to publish statement of accounts for all charities in Scotland, in full as a default. This increases transparency and accountability in the sector and is consistent with legislation elsewhere in the UK and the powers given to other charity regulators and registrars of corporate bodies.

OSCR are already publishing accounts for charities with an income of £25k+ and Scottish Charitable Incorporated Organisations (SCIOs) and encouraging all charities to provide a link to their accounts on their website. Charities with an income of under £25k currently make up over half of the total number of charities on the Scottish Charity Register².

Under Section 23 of the 2005 Act³, a charity must supply its latest statement of accounts to any person who reasonably requests it. There is a desire to publish accounts of charities with an income of under £25k to avoid section 23 compliance cases, whereby a charity refuses or neglects to provide information and accounts to a person asking for them. These cases often relate to smaller charities. By

² [OSCR | Register Search](#)

³ [Charities and Trustee Investment \(Scotland\) Act 2005 \(legislation.gov.uk\)](#) – Section 23

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publishing all accounts there is a comprehensive, transparent regime across the sector.

Publishing charity accounts in full will make it quicker and easier for funders and donors to see how public money is being spent, enabling banks and funders to do due diligence, improving transparency and trust. It will also free up resources within OSCR, allowing it to target its limited resources more effectively.

Charities will have the right to apply for dispensation from certain information (e.g., the names of any of the charity trustees) being included on the Register where the publication of that information is likely to jeopardise the safety or security of a person or property. This dispensation will carry over to statements of account with charities not being required to include any information in the statements of account any information which they have a dispensation for in relation to the Register.

There would be no need for OSCR or the charity to redact information prior to publication, nor a danger of different versions of the same accounts being available. This is the approach taken in England and Wales where, through provisions in 40(4) of the Charities (Accounts and Reports) Regulations 2008⁴, the dispensation applies to the production of the annual reports etc.

The Bill will create the legal basis for publication. The legal basis for including trustee names in the accounts is already found in the Charities Accounts (Scotland) Regulations 2006 for receipts and payments accounts and the Charity Statement of Recommended Practice (SORP) for fully accrued accounts. To process this data OSCR and the submitting charity will need to be able to identify and rely on an Article 9 (GDPR) condition.

*See [Annex B](#) which highlights the existing legal requirements for different legal forms of charity publishing their accounts or making them available to the public.

2.5-Will the implementation be accompanied by guidance or by an associated Code of Conduct? -OSCR will provide guidance to charities. There will be no statutory code of conduct related to this Bill.

2.1-Summary of proposal: Requirements on OSCR to include charity trustee names in the Scottish Charity Register, to keep an internal schedule of charity trustees' details and to keep a publicly searchable record of removed charity trustees
OSCR currently holds limited information on the estimated 180,000+ charity trustees involved in over 25,000 charities in Scotland. The law currently requires the Scottish Charity Register to set out the principal office of the charity or the name and address

⁴ [The Charities \(Accounts and Reports\) Regulations 2008 \(legislation.gov.uk\)](#)

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of one of its trustees if there is no principal office. The option proposed is for OSCR to establish a new internal database with contact details and further identifying information such as dates of birth, to publish trustee names on the public Register and to maintain a separate, publicly searchable record of individuals that have been removed from being concerned in the management or control of any body by the Court of Session (and are therefore permanently disqualified from acting as a charity trustee, unless OSCR grants them a waiver). This would provide valuable and relevant information to better support effective regulation of charities and their trustees, through improved compliance, investigation, and engagement work.

The powers provided by this proposal will require processing of data for the purposes of three distinct element:

- An internal database of charity trustees
- An external list of trustee names against the relevant charity(s)
- A list of people disqualified from being charity trustees by the Court of Session under the 2005 Act or the preceding Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (1990 Act).

2.2-Description of the personal data involved

Data included on both the internal and publicly available register
(Charity Trustee) first name
(Charity Trustee) last name

Data held on the internal register only
(Charity Trustee) date of birth for identification purposes
(Charity Trustee) Personal Address, Town, Postcode
(Charity Trustee) Personal Telephone number
(Charity Trustee) email address

2.3 Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups, or categories of persons?

There will be a publicly searchable list of names of persons disqualified from acting as a trustee in Scotland. This information will allow charities to conduct due diligence in a targeted manner, whilst minimising the amount of information that is publicly available (i.e., without searching) about individuals.

2.4 Necessity, proportionality, and justification

The obligations imposed by this proposal will require processing of data for the purposes of three distinct elements:

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- An internal database of charity trustees
 - An external list of trustee names against the relevant charity(s)
 - A list of people removed from being charity trustees by the Court of Session under the 2005 Act or the predecessor legislation.
-
- An internal database of charity trustees
and
 - An external list of trustee names against the relevant charity

OSCR estimate there are over 180,000 trustees in Scotland and they hold limited or no information on around 150,000 of those. OSCR have a power of inquiry over trustees but no easy way of knowing who they are or how to contact them. They collect information on trustees when organisations apply for charitable status, however once checked for disqualified trustees, it is destroyed after a period of 5 years.

This power will introduce efficiencies for compliance, investigation, and engagement work, and make it easier to identify who is in control and management of charities. It will enable OSCR to act more quickly and decisively where vulnerable beneficiaries or charitable assets may be at risk.

Additionally, this information will make it easier to establish if a person is a trustee of more than one charity, making it easier for OSCR to act more swiftly to protect assets or vulnerable beneficiaries of other connected charities where there is concern over conduct.

As there is currently no provision in the 2005 Act that requires OSCR to publish the names of charity trustees, data protection law makes it difficult for them to store, keep up to date and optimise information on trustees. There is currently no provision in the 2005 Act requiring OSCR to publish the names of charity trustees, and OSCR also has limited powers to collect information about trustees. This can make it difficult for OSCR to carry out its functions the provisions sought in the Bill will improve OSCR's ability to carry out its statutory duties.

The proposal will allow OSCR to collect and process limited personal data on all current charity trustees to establish a new internal database of trustees and to publish names of trustees on the Register.

- A list of people removed from being charity trustees by the Court of Session under the 2005 Act or the predecessor legislation.

There will be a separate publicly searchable record of individuals that have been removed from being concerned in the management or control of any body by the

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Court of Session (and are therefore permanently disqualified from acting as a charity trustee, unless OSCR grants them a waiver). This record of removed trustees would not be a full list of all the individuals, instead OSCR will be required to provide a search facility that allows a user to enter a person's name to check if they are on the list of individuals that have been removed by the Court of Session. This allows charities to conduct due diligence whilst minimising the amount of information that is publicly available about individuals. If, because of the search there is a match, the website would display the person's name, date of the order, name of the body the person was removed from, and details of any partial waivers granted. Where a user is unclear as to whether a search match is the same person, they will have the option to contact OSCR for further clarification. This replicates the system currently used by the Charity Commission for England and Wales that allows for searches of people removed as trustees in England and Wales.

The Bill will create the legal basis for publication.

In some instances, special category data may be inferred with a reasonable degree of certainty based on the nature of the charity. OSCR and the supplying charity will need to be able to identify and rely upon a relevant Article 9 condition for processing this data.

Consideration has been given to the 'right to be forgotten' regarding the names of removed or disqualified trustees being published as part of this proposal. It was concluded that once a trustee has been removed (by OSCR/Courts) the disqualification is permanent, unless or until a disqualification is waived by OSCR – the right to be forgotten does not apply where the data controller has a legal obligation to process the information or for the performance of a task carried out in the public interest or in the exercise of official authority.⁵

2.5 Will the implementation be accompanied by guidance or by an associated Code of Conduct?

OSCR will provide guidance to charities. There will be no statutory code of conduct related to this Bill.

2.1 Summary of proposal: A power for OSCR to conduct inquiries into former charities and their charity trustees etc.

At present, OSCR is not able to make inquiries into a body which is no longer a charity, a body which is no longer controlled by a charity or a charity which has ceased to exist. But the Court of Session has the power to permanently disqualify the following individuals from being charity trustees, on application from OSCR:

- former charity trustees of a body which is no longer a charity
- former trustees of a charity which has ceased to exist, and

⁵ [Right to erasure | ICO](#)

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- individuals who were in management or control of a body which is no longer controlled by a charity.

This means that if OSCR is not aware of potential misconduct before a charity ceases to exist or ceases to be a charity, or before a body ceases to be controlled by a charity, OSCR cannot open an inquiry if information subsequently becomes known. If OSCR cannot open an inquiry, it cannot gather the necessary evidence to allow it to make an application to the Court of Session to permanently disqualify individuals from being charity trustees. This poses a risk that trustees who are guilty of serious misconduct could go on to be trustees of other charities if the misconduct in cases where the misconduct was only discovered after the charity in question ceased to exist or ceased to be a charity.

This proposal gives OSCR a power to make inquiries into a body which is no longer a charity, a body which is no longer controlled by a charity or a charity which has ceased to. This will allow OSCR to gather the necessary evidence to make an application for permanent disqualification to the Court of Session, should this be necessary.

2.2 Description of the personal data involved:

- (Former charity trustee) first name
- (Former charity trustee) last name
- (Former charity trustee) date of birth for identification purposes
- (Former charity trustee) Personal Address, Town, Postcode
- (Former charity trustee) Personal Telephone number
- (Former charity trustee) email address

2.3 Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups, or categories of persons?

None

2.4 Necessity, proportionality, and justification

There are potential implications for named/published trustees/officials/managers – e.g., in cases where a charity they were involved with is under investigation yet who may not themselves be party to any wrongdoing. This is mitigated by the fact that OSCR will usually only publish information about an inquiry where it is required to do so or where it is in the public interest – this happens at the end unless a direction has been served. Individuals are not normally named in inquiry reports.

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OSCR would only investigate former charity trustees or individuals concerned in the management or control of a charity or body where there was suspicion of wrongdoing, and it was in the public interest to do so. This would be on a case-by-case basis, OSCR would not routinely investigate former trustees or charities that have simply ceased operating where there was no suspicion of wrongdoing.

Processing is necessary to ensure that trustees who are guilty of misconduct can be permanently disqualified and therefore not able go on to be trustees of another charity in cases where the misconduct is only discovered after the charity had ceased to exist/ceased to be a charity etc. The result of this is that charities, charitable assets, and beneficiaries would be better protected.

The Bill will form the legal basis by expanding OSCR's powers at section 28 of the 2005 Act to include a body which is no longer a charity, a body which is no longer controlled by a charity or a charity which has ceased to exist.

In terms of section 1(9) of the 2005 Act⁶, OSCR is required to act proportionately and for its regulatory activities to be targeted only at cases in which action is needed. So, in investigating former charity trustees, while there is a possibility that former trustees' names might be published as part of a report into an inquiry, OSCR is duty-bound only to take action of that nature in the cases that really need it and where doing so would be in the public interest.

This would extend the range of bodies that may be subject to inquiries, enabling OSCR to make inquiries into individuals who acted for or on behalf of those bodies (including former charity trustees), to allow OSCR to gather the necessary information about such individuals to support an application to the Court of Session for their permanent disqualification.

2.5-Will the implementation be accompanied by guidance or by an associated Code of Conduct? -OSCR will provide guidance to charities. There will be no statutory code of conduct related to this Bill.

2.1 Summary of proposal-Clarification of existing provision, to improve the speed and efficiency regarding OSCR's powers to gather information for inquiries

There are 2 issues in this proposal:

- A) inquiries into former charities and those misrepresenting themselves as charities
- B) timescales for requesting information

⁶ [Charities and Trustee Investment \(Scotland\) Act 2005 \(legislation.gov.uk\)](#) - Section 1

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2.2 Description of the personal data involved: As this relates to investigative powers there may be personal data involved, i.e., trustee details.

2.3 Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups, or categories of persons?

No

2.4 Necessity, proportionality, and justification

OSCR can require any person to provide information which it considers necessary for its inquiries. If OSCR requests such information about a charity from a third party, it must also give notice to the charity in question that it is the subject of the request and provide the charity with the right to review. However, the 2005 Act does not take account of situations where the body in respect of which information is sought is not a charity (e.g., a body that is misrepresenting itself as a charity or a charity that has ceased to exist). The effect of this is that OSCR cannot require a third party to provide information as it cannot serve the required notice on a 'charity.' This potentially hinders OSCR inquiries as it cannot access all the information it may require.

Where OSCR decides to request information from a third party about a charity to help with its inquiries, OSCR must notify the charity of its decision prior to doing so. This must be done within specified time limits and the charity has a right of review against OSCR's decision. There is some doubt as to how these various notice periods and time limits are intended to interact and the Bill will clarify the position, thereby making the process more efficient.

There will be no new processing powers granted to OSCR as a result of this proposal. The changes relate to gathering information for investigative purposes. This information may include personal data which would be processed by OSCR in accordance with the GDPR, and in a manner consistent with its duties under the 2005 Act.

At present OSCR can only investigate charities, not former or de-registered charities. This proposal aims to improve efficiencies and ensure that all appropriate entities can be covered by OSCRs investigative and enquiry powers. It provides clarification of existing provision, to improve speed and efficiency regarding OSCR's powers to gather information for inquiries

2.5 Will the implementation be accompanied by guidance or by an associated Code of Conduct?

OSCR will provide guidance to charities. There will be no statutory code of conduct related to this Bill

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2.1 Summary of proposal: Providing OSCR with a power to appoint interim trustees, together with a list of minor amendments to the Charities and Trustee Investment (Scotland) 2005 Act

A list of technical changes and amendments to the Charities and Trustee Investment (Scotland) Act 2005. Those technical changes which involve the processing of personal data are highlighted below.

Change to charity contact details: Currently charities are required to notify OSCR of a change of principal office or trustee contact for the charity but there is no explicit requirement to provide a new contact. Providing a new contact will ensure that the information on the register can be kept up to date and the public still have a contact address for the charity.

2.2 Description of the personal data involved

2.3 Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups, or categories of persons?

None

2.4 Necessity, proportionality, and justification

These provisions in the Bill give OSCR the power to ensure that relevant contact details for charities are kept up to date by stipulation in the legislature.

2.5 Will the implementation be accompanied by guidance or by an associated Code of Conduct?

OSCR will provide guidance to charities. There will be no statutory code of conduct related to this Bill.

Research into the following proposals in the Bill have identified no impacts on personal data;

Updating the criteria for the automatic disqualification of charity trustees and extending it to individuals with senior management positions in charities

No impacts on personal data identified

Providing OSCR with a new power to issue positive directions to charities

No impacts on personal data identified

Removal from the Scottish Charity Register of unresponsive charities that fail to submit statements of account

No impacts on personal data identified

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A requirement for all charities in the Scottish Charity Register to have and retain a connection to Scotland

No impacts on personal data identified

The creation of a Record of Charity Mergers providing for the transfer of legacies

No impacts on personal data identified

A requirement for de-registered charities' assets to continue to be used to provide public benefit

No impacts on personal data identified

3. Data Controllers

Organisation:OSCR

Activities: OSCR's functions are set out in section 1 (5) of the Charities and Trustee Investment (Scotland) Act 2005:

- (a)to determine whether bodies are charities,
- (b)to keep a public register of charities,
- (c)to encourage, facilitate and monitor compliance by charities with the provisions of this Act,
- (d)to identify and investigate apparent misconduct in the administration of charities and to take remedial or protective action in relation to such misconduct, and
- (e)to give information or advice, or to make proposals, to the Scottish Ministers on matters relating to OSCR's functions.

Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018? Yes, OSCR is a Non-Ministerial Office, overseen by a strategic Board of non-executives, appointed by Scottish Ministers. OSCR is accountable to directly to the Scottish Parliament rather than to Scottish Ministers.

Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data: general processing OSCR's duties as laid out in the Charities and Trustee Investment (Scotland) Act 2005. Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data.

Include condition from Schedule 1 or 2 of the Data Protection Act 2018.
Article 9 (g) Reasons of substantial public interest (with a basis in law)

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The 23 substantial public interest conditions are set out in paragraphs 6 to 28 of Schedule 1 of the DPA 2018:

Regulatory requirements.

Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018: No law enforcement will take place as a result of the proposals in this Bill.

4. Consultation

4.1-Have you consulted with the ICO using the Article 36(4) form?

Yes, a meeting was held with ICO on 12 February 2020. The ICO response to the 2021 consultation can be found below:

[Response 372352820 to Consultation on Scottish Charity Law - Scottish Government - Citizen Space](#)

4.2 Do you need to hold a public consultation and if so, has this taken place? What was the result?

Consultations were carried out in 2019 and 2021. Due to the nature of the proposals within this Bill data protection was explored as part of the overall consultation process. There were questions asked in both the 2019 consultation and 2020 consultation relating to data protection, all of which were supported by the vast majority of respondents.

- 7 January - 1 April 2019: Considering OSCR's proposals and the passage of time since the 2005 Act, The Scottish Government consulted on updating the legislation to promote transparency and accountability to maintain public trust and confidence in the sector and OSCR. The consultation was framed around OSCR's 10 proposals. Over 300 responses were received, and the majority of respondents supported the proposals in the consultation, however the analysis report made clear that more policy development work and stakeholder engagement was required before we could bring forward any legislative changes.
- February 2021: A further consultation ran until Feb 21, asking specific questions on how proposals put forward by the Scottish Charity Regulator (OSCR) about improvements to charity regulation in Scotland could be implemented. 100 responses were received plus feedback from a series of online events run in

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conjunction with OSCR, the Scottish Council of Voluntary Organisations (SCVO) and the Association of Chief Officers of Scottish Voluntary Organisations (ACOSVO).

In addition to the consultation processes, targeted stakeholder events with partners took place in December 2020 and January 2021 where we engaged with mix of charity professionals, trustees, charity staff, volunteers, and practitioners:

- The Law Society of Scotland, Charity Law sub-committee, made up of practising legal professionals and academics.
- OSCR charities reference group, representatives from approximately 35 charities reflecting the range and breadth of the sector.
- SCVO and ACOSVO jointly hosted two events with 33 attendees.
- Local charities took part in events held by 12 Third Sector Interfaces (TSIs).

4.3 Were there any Comments/feedback from the public consultation about privacy, information, or data protection?

The vast majority were supportive of the need to publish accounts, however many did highlight that they needed to be GDPR compliant.

It has been highlighted by the Church of Scotland, in their response to the 2019 consultation,⁷ and reiterated in 2021⁸, that particularly with regard to Designated Religious Charities (DRCs) any publication of names of trustees would allow the public to infer an individual's religion or belief and could therefore put them at risk of discrimination. This could also be true of certain charities where in order to be a trustee a person must have lived experience of certain criteria (i.e., addiction recovery, domestic abuse, disability).

5. Further assessment and risk identification

5.1 Will the proposal require the creation of new identifiers, or require the use of existing ones? No

5.2 Will the proposal require regulation of:

- technology relating to processing
- behaviour of individuals using technology
- technology suppliers
- technology infrastructure
- information security

⁷ Church of Scotland response to Consultation on Scottish Charity Law 2019: [Response 640234508 to Consultation on Scottish Charity Law - Scottish Government - Citizen Space](#)

⁸ Church of Scotland response to Strengthening Scottish charity law consultation 2021: [Response 520871414 to Strengthening Scottish Charity Law Survey - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

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Charities are already required to submit accounts and the proposals in the Bill will not change this. What will change is OSCR's ability to publish the accounts submitted. The format and content of charity accounts is prescribed in the Charities Accounts (Scotland) Regulations 2006 (as amended). OSCR has published extensive guidance including videos, example accounts and template documents on its website. They also regularly include material on annual accounts and reports at its Meet the Regulator and other engagement events. Accounts staff offer guidance or will signpost to other sources of advice.

Implementation of the Bill proposals will include an extensive awareness-raising campaign to alert charities to the fact that all accounts will be published in an unredacted form. Accounts are public documents that charities must already make available to any person making a reasonable request. The onus will be upon charities to send OSCR accounts in a form that is ready for publication. However, in the short term OSCR will implement a programme of sample pre-publication checks to ensure that its messaging is proving effective.

The former OSCR Online system was accessed by a username (the charity number) and a password. It is known, anecdotally, that username was often shared among individuals which presented a risk in terms of data security. The new system allows for three possible users for each charity who can access a charity's records. This allows for a charity's accountant or other professional adviser or senior employee to have access in addition to charity trustees. Each user has their own login connected to their email address and may be a user for more than one charity. New users must be invited by an existing user for security purposes. They must accept the invitation with a verification link sent to their email. The information available to users is limited but they can access the charity's submission and accounts history. Requests to OSCR staff to add or remove users will be retained as emails or other forms of verification in their records before making the changes. OSCR are satisfied that this is a significantly improved system in terms of data security.

5.3 Will the proposal require establishing or change to operation of an established public register (e.g. Accountancy in Bankruptcy, Land Register etc.) or other online service/s?

The Bill introduces a requirement for OSCR to publish statements of account for all charities in the Scottish Charity Register. Many charities already make their accounts publicly available; however, this proposal will mean that accounts for all charities will be published.

This Bill also stipulates a new requirement for OSCR to add charity trustee names to entries in the Scottish Charity Register, and the creation and maintenance of an internal database of charity trustees as well as a publicly searchable record of removed charity trustees.

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5.4 Please provide details of whether the proposal will involve the collection or storage of data to be used as evidence or use of investigatory powers (e.g., in relation to fraud, identify theft, misuse of public funds, any possible criminal activity, witness information, victim information or other monitoring of online behaviour) The data processed as a result of this proposal will enable OSCR to better support effective regulation of charities and their trustees, through improved compliance, investigation, and engagement work.

The new internal trustee database may be used for investigative purposes regarding fraud or potential criminal activity to ensure the safety of charity assets.

5.5 Would the proposal have an impact on a specific group of persons e.g. children, vulnerable individuals, disabled persons, persons with health issues, persons with financial difficulties, elderly people? (Please specify) In what way?

As explored in the EQIA for this Bill no group or individual with protected characteristics will be impacted disproportionately as a result of this Bill.

5.6 Is there anything potentially controversial or of significant public interest in the policy proposal as it relates to processing of data? For example, is the public likely to view the measures as intrusive or onerous?

Sensitivities may be present for some trustees should their details become public, therefore a dispensation system, like that already employed by OSCR which allows for individuals to apply for dispensation from having certain information included in the Scottish Charity Register⁹ will have to be introduced. It has been highlighted by the Church of Scotland, in their response to the 2019 consultation,¹⁰ and reiterated in 2021¹¹, that particularly with regard to religious charities any publication of names of trustees would allow the public to infer an individual's religion or belief and could therefore put them at risk of discrimination. This could also be true of certain charities where in order to be a trustee a person must have lived experience of certain criteria (i.e., addiction recovery, domestic abuse, disability).

The option to apply for dispensation under particular circumstances is available. Provision to withhold principal address details and charity trustee/contact details where the inclusion of that information is "likely to jeopardise the safety or security of any person or premises" is already contained in section 3(4) of the Charities and Trustee Investment (Scotland) Act 2005¹² and would continue to remain in effect.

⁹ s.3(4) [Charities and Trustee Investment \(Scotland\) Act 2005 \(legislation.gov.uk\)](#)

¹⁰ Church of Scotland response to Consultation on Scottish Charity Law 2019: [Response 640234508 to Consultation on Scottish Charity Law - Scottish Government - Citizen Space](#)

¹¹ Church of Scotland response to Strengthening Scottish charity law consultation 2021: [Response 520871414 to Strengthening Scottish Charity Law Survey - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

¹² Charities and Trustee Investment (Scotland) Act 2005: [Charities and Trustee Investment \(Scotland\) Act 2005 \(legislation.gov.uk\)](#)

Section 3: Scottish Charity Register: [Charities and Trustee Investment \(Scotland\) Act 2005 \(legislation.gov.uk\)](#)

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5.7 Are there consequential changes in other legislation that need to be considered as a result of the proposal or the need to make further subordinate legislation to achieve the aim?

Powers for Scottish Ministers to make subordinate legislation will be present in the Bill but will not impact on the processing of personal data required to achieve the aims of the Bill.

5.8 Will this proposal necessitate an associated code of conduct?

If so, what will be the status of the code of conduct (statutory, voluntary etc.)?

OSCR will provide guidance to charities. There will be no statutory code of conduct related to this Bill

5.9 Have you considered whether the intended processing will have appropriate safeguards in place, for example in relation to data security, limitation of storage time, anonymisation? If so briefly explain the nature of those safeguards

Please indicate how any safeguards ensure the balance of any competing interests in relation to the processing. -There are some aspects of this Bill that may impact on individuals who fall within these categories. These are mitigated, in some part, by data protection legislation and the option to apply for a waiver or dispensation under particular circumstances. Provision to withhold principal address details and charity trustee/contact details where the inclusion of that information is "likely to jeopardise the safety or security of any person or premises" is already contained in section 3(4) of the Charities and Trustee Investment (Scotland) Act 2005¹³ and would continue to remain in effect.

Aside from the first two proposals, the majority of the Bill proposals are of a technical nature. They will not require all charities to take new or additional steps and some proposals will only impact upon those charities directly affected.

5.10 Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups, or categories of persons? If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights or use of social profiling to inform policy making.

Although an individual's special category data will not be shared or published as a result of these proposals, it could be indirectly captured and inferred. In some instances, identifying those associated with certain organisations could lead to the revealing of information that could indirectly disadvantage people based on protected characteristics or sensitive information being inferred from that published in accounts

¹³Charities and Trustee Investment (Scotland) Act 2005: [Charities and Trustee Investment \(Scotland\) Act 2005 \(legislation.gov.uk\)](#) Section 3: Scottish Charity Register: [Charities and Trustee Investment \(Scotland\) Act 2005 \(legislation.gov.uk\)](#)

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or the trustee register. One example of this could be the location of a women's shelter might be revealed through the identity of the recorded person or their associates, which would put the women who use the shelter at risk. In this scenario, the publication of these details would indirectly have a negative impact on women both as trustees and as beneficiaries of a charity. To mitigate risks such as this, recorded persons or associates can apply for a dispensation if they feel that the disclosure of their details could result in violence, abuse, intimidation or threat of violence or abuse against themselves, or others connected to them as per section 3 (4) of the 2005 Act.

5.11 Will the proposal include automated decision making/profiling of individuals using their personal data? No

5.12 Will the proposal require the transfer of personal data to a 'third country'? (Under UK GDPR this is defined as country outside the UK.) No

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6. Risk Assessment

6.1 Risk to individual rights

- right to be informed
- right of access
- right to rectification
- right to erasure
- right to restrict processing
- right to data portability
- right to object
- rights in relation to automated decision making and profiling

Will this initiative result in any detriment if individuals do not want their personal data to be processed? This is particularly relevant if special category data is being processed

Solution or mitigation

Advice and training for charities in how to ensure that personal data provided in charitable accounts and reports is minimised to that which is necessary.

With regard to the register of removed trustees, the right to be forgotten¹⁴ does not apply where the data controller (in this case OSCR) has a legal obligation to process the information.

The option to apply for a waiver or dispensation under particular circumstances is available. Provision to withhold principal address details and charity trustee/contact details where the inclusion of that information is "likely to jeopardise the safety or security of any person or premises" is already contained in section 3(4) of the Charities and Trustee Investment (Scotland) Act 2005¹⁵ and would continue to remain in effect.

Likelihood (Low/Med/High)

-Low

Severity (Red/Amber/Green)

-Green

Result

-Mitigated

¹⁴ [Right to erasure | ICO](#)

¹⁵ Charities and Trustee Investment (Scotland) Act 2005: [Charities and Trustee Investment \(Scotland\) Act 2005 \(legislation.gov.uk\)](#)

Section 3: Scottish Charity Register: [Charities and Trustee Investment \(Scotland\) Act 2005 \(legislation.gov.uk\)](#)

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6.2 Privacy risks

Purpose limitation

Solution or mitigation

The purposes for processing are confined to OSCR's statutory functions as a Regulator as specified in the 2005 Act.

Likelihood (Low/Med/High)

-Low

Severity (Red/Amber/Green)

-Green

Result

-Mitigated

6.3 Privacy risks

Transparency – data subjects may not be informed about the purposes and lawful basis for the processing, and their rights

Solution or mitigation

OSCR will ensure that fair processing information is provided and guidance for charities is updated to inform data subjects of the purposes and lawful basis for processing charity trustee personal data.

Likelihood (Low/Med/High)

-Low

Severity (Red/Amber/Green)

-Green

Result

-Mitigated

6.4 Privacy risks

Minimisation and necessity

Solution or mitigation

Charities enjoy a special status in our society which enables access to certain benefits not available to other entities, including other third sector and voluntary organisations. These benefits can include some tax and rates reliefs, opening up specific sources of funding only available to registered charities, public donations.

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Charity trustees are the people who have general control and management of the charity, they are trusted to look after the charity's assets and are legally responsible for making sure that the charity fulfils its charitable purpose(s).

OSCR's surveys on public trust and confidence in charities consistently show that the public have high expectations of the charity sector. Key drivers of public trust in charities are:

- knowing that money goes to the cause;
- seeing evidence of achievements; and
- knowing it is well run.

OSCR will only collect data that is required for regulatory purposes.

OSCR publishes its privacy statement on their website under Privacy, GDPR and Data Protection¹⁶, clearly stating the law, the rights of individuals and organisations and OSCRs data controller information and ICO registration number.

Likelihood (Low/Med/High)

-Low

Severity (Red/Amber/Green)

-Green

Result

-Mitigated

6.5 Privacy risks

Accuracy of personal data

Solution or mitigation

Personal data will be provided direct by the charities to OSCR. Charities will have the facility to update contact details via OSCR's 'OSCR Online' system. In addition, OSCR will seek to ensure the accuracy of the personal data through its existing annual monitoring regime, where charities will check the accuracy of the personal data held by OSCR in relation to their trustees.

Likelihood (Low/Med/High)

-Low

Severity (Red/Amber/Green)

-Green

Result

-Accepted

¹⁶ [OSCR | Privacy](#)

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6.6 Security risks

Keeping data securely

Retention

Solution or mitigation

The Data Protection Act 2018¹⁷ requires public authorities to ensure information is retained securely and deleted once it has been used for the purpose for which it was provided. The ICO's Code of Practice¹⁸ provides that bodies have regard to specific security standards outlined in the Code. The Code provides that bodies must have a security plan for sharing data.

OSCR has processes in place to ensure they are compliant with these legal requirements.

In terms of retention, as far as possible OSCR aim for processes to be automated, so the database will delete records after defined period but with an option for manual override where risks are identified. OSCR propose to retain records for each data subject for 24 months after they cease to be active. This allows for a 12-month accounting year, a further 9 months within which accounts must be filed and 3 months for us to risk assess any concerns arising from monitoring of accounts, from section 46 reports or concerns identified by the public. After 24 months has elapsed, data will be deleted automatically unless it is manually overridden and migrated to an inquiry file. Earlier manual deletion should also be possible, for example where there is evidence that a trustee is deceased.

The new OSCR online system allows for three possible users for each charity who can access a charity's records. This allows for a charity's accountant or other professional adviser or senior employee to have access in addition to charity trustees. Each user has their own login connected to their email address and may be a user for more than one charity. New users must be invited by an existing user for security purposes. They must accept the invitation with a verification link sent to their email. The information available to users is limited but they can access the charity's submission and accounts history. Requests to OSCR staff to add or remove users will be retained as emails or other forms of verification in their records before making the changes.

Likelihood (Low/Med/High)

-Low

¹⁷ [Data Protection Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

¹⁸ [Codes of Practice | ICO](#)

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Severity (Red/Amber/Green)

-Green

Result

-Mitigated

6.7 Security risks

Transfer – data may be lost in transit

Solution or mitigation

OSCR has taken steps to ensure that they are in compliance with the Digital Economy Act 2017 section 35(6)¹⁹, which requires the appropriate national authority (for example, UK Government or the Scottish Ministers) to have had regard to the systems and procedures for the secure handling of information by persons whom they add to schedule 4.

Likelihood (Low/Med/High)

-Low

Severity (Red/Amber/Green)

-Green

Result

-Mitigated

6.8 Security risks

Solution or mitigation

OSCR complies with the Digital Economy Act 2017²⁰.

Everyone who is involved in information sharing arrangements under powers in the Digital Economy Act 2017 is required to have regard to specific security standards. The Code sets out three specific requirements:

1. Public authorities and receiving parties should consider the standards and protocols that apply to their organisation when providing or receiving information before agreeing appropriate standards and protocols; all parties should be satisfied that they provide a level of security that is both appropriate and meets or exceeds their own standards and protocols.

¹⁹ [Digital Economy Act 2017 \(legislation.gov.uk\)](https://legislation.gov.uk) – Section 35

²⁰ [Digital Economy Act 2017 \(legislation.gov.uk\)](https://legislation.gov.uk)

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2. Each party involved in the data share must make sure effective measures are in place to manage potential or actual incidents relating to the potential loss of information; and

3. Public authorities and data processors, together with any third parties must be fully engaged in the resolution of a potential or actual data incident.

As part of any formal data sharing agreement, security plans will need to be evidenced and documented to include; secure storage arrangements, protective marking; assurance around process for restricted access by individuals; notification protocol in the event of a breach; procedures to investigate cause of any breach.

Likelihood (Low/Med/High)

-Low

Severity (Red/Amber/Green)

-Green

Result

-Mitigated

6.9 Other risks

will this impact on children?

No impact on children. There is no minimum age for charity trustees stated in the 2005 Act; however, OSCR would expect charity trustees to be over the age of 16. If any charity trustees are under the age of 16, it would be best to get professional advice to determine if this is suitable and if there are any legal implications.

Likelihood (Low/Med/High)

-Low

Severity (Red/Amber/Green)

-Green

Result

-Mitigated


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Data Protection Officer (DPO)

The DPO may give additional advice, please indicate how this has been actioned.

Advice from DPO	Action

I confirm that Charities (Regulation and Administration) (Scotland) Bill has been sufficiently assessed in compliance with the requirements of the UK GDPR and Data Protection Act 2018

Name and job title of an IAO or equivalent	Date each version authorised
Jane O'Donnell, Deputy Director - Community Empowerment, Reform and Governance Division. 	8 November 2022

Charities (Regulation and Administration) (Scotland) Bill

ANNEX A – Charities (Regulation and Administration) (Scotland) Bill: Overview of proposals

- A requirement on OSCR to publish the statements of account for all charities in the Scottish Charity Register (section 9)
- Requirements on OSCR to include charity trustee names in the Scottish Charity Register, to keep an internal schedule of charity trustees' details and to create a publicly searchable record of removed charity trustees (sections 2, 3 and 7)
- Updating the criteria for the automatic disqualification of charity trustees and extending it to individuals with senior management positions in charities (sections 4 to 6)
- Providing OSCR with a new power to issue positive directions to charities (section 15)
- Removal from the Scottish Charity Register of unresponsive charities that fail to submit statements of account (section 11)
- A requirement for all charities in the Scottish Charity Register to have and retain a connection to Scotland (section 16)
- A power for OSCR to conduct inquiries into former charities and their charity trustees etc. (section 13)
- A requirement for de-registered charities' assets to continue to be used to provide public benefit (schedule, paragraph 7)
- Clarification of existing provision, to improve speed and efficiency regarding OSCR's powers to gather information for inquiries (section 14)
- The creation of a record of charity mergers and provision for the transfer of legacies (section 12)
- Providing OSCR with a power to appoint interim trustees (section 8)
- List of minor or technical amendments to the 2005 Act (schedule)

Charities (Regulation and Administration) (Scotland) Bill

Annex B – Charity legal forms and accounts publication requirements

Legal form

Unincorporated Associations

Number of charities²¹

10635

Regulatory requirements to publish or make available accounts

Under [section 23 \(1\)\(a\) and \(b\) of the Charities and Trustee Investment \(Scotland\)](#)

[Act 2005](#), anyone can request from the charity direct:

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

Legal form

SCIOs

Number of charities

5536

Regulatory requirements to publish or make available accounts

Under [section 23 \(1\)\(a\) and \(b\) of the Charities and Trustee Investment \(Scotland\)](#)

[Act 2005](#), anyone can request from the charity direct:

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

Plus, any person may request a copy of the SCIO's register of charity trustees and, if the request is reasonable, will be entitled to be given a copy by the SCIO within 28 days. [Reg 4 of the Scottish Charitable Incorporated Organisations Regulations 2011](#).

Legal form

Charitable companies

Number of charities

4797

Regulatory requirements to publish or make available accounts

The Directors of the company are the charity trustees, company accounts are published on Companies House which also includes the register of Directors.

²¹ Correct as of 13 June 2022

Charities (Regulation and Administration) (Scotland) Bill

Legal form
Trusts

Number of charities
3363

Regulatory requirements to publish or make available accounts
Under [section 23 \(1\)\(a\) and \(b\) of the Charities and Trustee Investment \(Scotland\) Act 2005](#), anyone can request from the charity direct:

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

Legal form
Cross-border charities, including CIOs (also registered in England and Wales)

Number of charities
1228

Regulatory requirements to publish or make available accounts
Cross-border charity accounts are published by the Charity Commission for England and Wales (CCEW) along with the register of trustees.

Legal form
Other (churches, etc)

Number of charities
517

Regulatory requirements to publish or make available accounts
Under [section 23 \(1\)\(a\) and \(b\) of the Charities and Trustee Investment \(Scotland\) Act 2005](#), anyone can request from the charity direct:

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

Legal form
Statutory Corporation (Royal charter, NDPBs, etc)

Number of charities
189

Under [section 23 \(1\)\(a\) and \(b\) of the Charities and Trustee Investment \(Scotland\) Act 2005](#), anyone can request from the charity direct:

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

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Regulatory requirements to publish or make available accounts
NDPBs are public authorities and will have to publish their accounts, plus have published transparency information about their trustee boards.

Most Royal charter charities are also cross-border and so information is published by CCEW.

Legal form
Registered Social Landlords (RSLs)

Number of charities
144

Regulatory requirements to publish or make available accounts
RSLs accounts are published by the Scottish Housing Regulator.

Legal form
Registered societies

Number of charities
163

Regulatory requirements to publish or make available accounts
Set up under the Co-operative and Community Benefit Societies Act 2014 and registered with the FCA. Accounts and trustee information published on the Mutuals Public Register maintained by the FCA.

Legal form
Educational Endowment (Inc. independent schools)

Number of charities
88

Regulatory requirements to publish or make available accounts
Under [section 23 \(1\)\(a\) and \(b\) of the Charities and Trustee Investment \(Scotland\) Act 2005](#), anyone can request from the charity direct:

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

Legal form
Community benefit society (Bencoms)

Number of charities
19

Charities (Regulation and Administration) (Scotland) Bill

Regulatory requirements to publish or make available accounts
Set up under the Co-operative and Community Benefit Societies Act 2014 and
registered with the FCA. Accounts and trustee information published on the Mutuals
Public Register maintained by the FCA.

Total -26,679²²

²² This figure is inclusive of 1228 cross border charities operating in more than one area of the UK as well as Scotland – these are not represented in the total figure shown on OSCR’s website which shows a total number of charities as 25,541.



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