

Charities (Regulation and Administration) (Scotland) Bill

Equality Impact Assessment Record

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EQUALITY IMPACT ASSESSMENT RECORD

Title of policy/ practice/ strategy/ legislation etc.
Charities (Regulation and Administration) (Scotland) Bill

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Is this new policy or revision to an existing policy? Revision of The Charities and Trustee Investment (Scotland) Act 2005 ('the 2005 Act')

1. Screening

Policy Aim

This Bill will increase transparency and accountability in Scottish charities and enhance regulatory powers for the Scottish Charity Regulator (OSCR). The Scottish Government has been actively working on a review of Scottish charity law since January 2019. The review has focused on practical proposals put forward by OSCR. The Bill does not seek to revisit the

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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 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, which is regulated by the Charity Commission for England and Wales and the Charity Commission for Northern Ireland. Consultations in 2019¹ and 2021² showed strong support for all 10 proposals put forward by OSCR and identified further areas of improvement which resulted in the additional two proposals being developed. Stakeholders are keen to see changes brought forward given it has been 17 years since the 2005 Act was passed.

Stakeholder expectations of primary legislation have been raised by four PfG commitments and many already see the legislative changes as taking too long, viewing the changes as straightforward and technical.

In September 2021, the Scottish Government announced its commitment to improve charity law in Scotland as part of its Programme for Government 2021-22:

- 'We will bring forward legislation to improve Charity Law, strengthening the legal and regulatory framework and enhancing public trust in this vital sector.'

Charities and their operations cover the full range of national outcomes, ensuring the regulatory framework underpinning charities is fair and proportionate can strengthen the sectors contribution to those outcomes. The legislation will contribute specifically to the delivery of the following Scottish Government's National Outcomes:

- We tackle poverty by sharing opportunities, wealth and power more equally
- We are creative and our vibrant and diverse cultures are expressed and enjoyed widely

Who will it affect?

¹Scottish charity law: consultation analysis - [Scottish charity law: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/scottish-charity-law/analysis/summary/pages/10/index.aspx)

²Strengthening Scottish charity law: analysis of engagement responses [Strengthening Scottish charity law: analysis of engagement responses - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/scottish-charity-law/analysis/summary/pages/10/index.aspx)

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As the Charities (Regulation and Administration) (Scotland) Bill (the Bill) is a technical one aiming to increase the transparency and accountability in Scottish charities and increase regulatory powers for OSCR, the scope of those directly affected is potentially quite narrow.

The bulk of the proposals addressed in the Bill will have a direct impact on OSCR staff, charity trustees and charity and volunteer organisations. There may be indirect effects on the beneficiaries of charities.

Equality legislation³ covers the protected characteristics of age, disability, gender reassignment, gender including pregnancy and maternity, race, religion and belief, and sexual orientation. 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 2005⁴ and would continue to remain in effect.

Groups potentially affected by the proposals are set out below. The Policy Memorandum for the Bill provides details of each proposal.

A requirement on OSCR to publish the statements of account for all charities in the Scottish Charity Register

And

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

Sensitivities may be present for some trustees should their details become public, therefore a dispensation system, similar to that already employed by OSCR which allows for individuals to apply for dispensation from having to include certain information in the Scottish Charity Register⁵ will be introduced. It has been highlighted by the Church of Scotland, in their response to the

³ The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012: [The Equality Act 2010 \(Specific Duties\) \(Scotland\) Regulations 2012 \(legislation.gov.uk\)](#)

⁴ 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 \(legislation.gov.uk\)](#)

⁵ s.3(4) [Charities and Trustee Investment \(Scotland\) Act 2005 \(legislation.gov.uk\)](#)

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2019 consultation,⁶ and reiterated in 2021⁷, 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).

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

This proposal will extend the criteria that trigger automatic disqualification in Scotland to broadly match the rest of the UK, ensuring there is consistent criteria for the automatic disqualification of trustees across the UK by closing legislative gaps that currently exist in the Scottish legal framework. The second part of this proposal will extend the disqualification criteria to cover those in specific senior management positions within charities, as is currently the case in England and Wales.

We have considered that there is potential for marginalised communities and individuals to be impacted more greatly by this proposal. The inclusion of this change to legislation would mean that an individual who is, for example, an undischarged bankrupt would be disqualified from holding a senior management position within a charity.

There may be a disproportionate impact on men as, although the third sector does have a higher number of women involved in general, there is an imbalance at senior management level with more men holding these positions than women⁸.

What might prevent the desired outcomes being achieved?

Significant amendments to the Bill or the Bill being voted down would prevent the desired outcomes being achieved.

2. Stage 1: Framing

Results of framing exercise

⁶ Church of Scotland response to Consultation on Scottish Charity Law 2019: [Response 640234508 to Consultation on Scottish Charity Law - Scottish Government - Citizen Space](#)

⁷ Church of Scotland response to Strengthening Scottish charity law consultation 2021: [Response 520871414 to Strengthening Scottish Charity Law Survey - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

⁸ [SCVO State of the Sector Report | Female Leadership in Charities and the Third Sector | Brett Nicholls Associates | Gender Equality In The Charity Sector. Is There Strength in Numbers? \(charityjob.co.uk\)](#)

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Although the immediate impact of this Bill directly affects a relatively small group there could potentially be consequential effects on those with protected characteristics laid out in equality legislation⁹; age, disability, gender reassignment, gender, race, religion and belief, and sexual orientation. We¹⁰ have considered the following based on research and evidence.

- Age:

The Scottish Charity Register (“the Register”) will not include the age of trustees. The internal database for OSCR use will hold the date of birth of the charity trustee to serve as a unique identifier should there be a number of trustees with the same name.

The Register is available online. Statistically internet usage is very high amongst the general population up to the age of 75. Only 43% of over 75-year-olds in Scotland used the internet in 2019¹¹ so many in this age group may be uncomfortable or unable to access the register directly themselves. Notably, there has been a significant increase in internet use amongst older adults aged 60+ (from 29 per cent to 66 per cent) in 2019¹².

Although there has been an increase in IT literacy, there are still some who would prefer not to use an online portal. The OSCR Online portal asks whether a charity is uploading accounts or providing a hard copy. OSCR report that they still encounter a significant number of charities that have capability to complete online returns but not to scan and attach electronic copies of accounts. Around 2,000 paper accounts are received by OSCR each year. These are scanned and uploaded by OSCR staff to the charity’s online entry. If a charity is unable to complete the annual return form online, they can request a paper copy and OSCR staff will input the data online when it is returned.

This concern about IT literacy applies to those requesting to see accounts as well. Section 23 of the 2005 Act¹³ provides a right to request a copy of a charity's constitution or latest set of accounts. This existing right gives a person the right to make reasonable requests about the form the information takes e.g., they may request the accounts in hard copy. Additionally in terms

⁹ [The Equality Act 2010 \(Specific Duties\) \(Scotland\) Regulations 2012 \(legislation.gov.uk\)](#)

¹⁰ The Charity Law Bill Team SG, Research and analysis colleagues SG, OSCR – examination of the consultation results provided by a variety of stakeholders across the Third Sector

¹¹ [Scottish household survey 2019: annual report - gov.scot \(www.gov.scot\)](#)

¹² It should be noted that this data is from the 2019 Scottish Household Survey results. It is likely that these figures have been impacted by the increased digital literacy and usage that developed during the lockdowns of the Covid-19 pandemic.

¹³ [Charities and Trustee Investment \(Scotland\) Act 2005 \(legislation.gov.uk\)](#) – section 23

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of section 21 of the 2005 Act OSCR must make the register available for public inspection at its principal office. As with the Register, new section 45B (inserted by section 9 of the Bill) provides that OSCR must make the statements of account available for public inspection at its principal office. This is a reasonable mitigation against this issue.

- Disability:

Accessibility issues may exist for those with literacy or numeracy barriers. Although the Scottish Survey of Adult Literacies 2009 found that overall, the Scottish population has a good level of literacy skills in line with international expectations there is still a need to ensure that barriers to accessibility are tackled where possible. While around 25% of the adult population would benefit from improving their literacy skills, only around 3.6% of the Scottish population has very limited capabilities¹⁴.

The evidence gathered from national surveys suggests that a high percentage of households in Scotland have someone who is disabled or has a long-term health condition. The accessibility of the online platform that OSCR will use to collect information for the trustee registers and the return of accounts is a critical design factor with regard to people with disabilities and neurodiversity affecting processing or reading ability.

The online service used by charities at present¹⁵ will not change as a result of any of the proposals. OSCR have recently introduced an updated and improved online system which allows charities to complete their annual returns and attach their accounts submission for OSCR's records using the online portal. When the system was procured, it was designed to meet the UK Government Web Content Accessibility Guidelines (WCAG2.1)¹⁶ standards using Microsoft templates. Accessibility charities were invited to review the system during testing, and this is under regular review. OSCR's website is the place where the public will view charity accounts. The website has additional accessibility features, such as Recite Me and Dyslexia / high contrast sliders which go beyond the requirements developers advised OSCR at the time the platform was being designed.

OSCR also provides support to users of the online system through guidance¹⁷. Tooltips will also be added to OSCR Online forms during phase 2 of the rollout. OSCR staff provide extensive real time help by telephone and email to users of the service and work with staff in Third Sector Interfaces to ensure that they are

¹⁴[Literacy Action Plan An Action Plan to Improve Literacy in Scotland \(www.gov.scot\)](http://www.gov.scot) as referenced in [Adult Literacies in Scotland 2020: Strategic guidance \(www.gov.scot\)](http://www.gov.scot)

¹⁵ [OSCR | Online Services](#)

¹⁶ [Understanding WCAG 2.1 - Service Manual - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

¹⁷ [OSCR | Submit an annual return](#)

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equipped to assist charities. There is also allowance for charities to complete hard copy forms and accounts where requested.

- Gender Reassignment:

OSCR will not directly collect data on a person's gender identity or indicate whether an individual had previously identified by another name, which could indicate a change in gender identity. However, it could become apparent should a transgender person change their name after their data has been entered on the public Register, then their name on the Register would need to be updated. This would be necessary to both meet the aims of the Register and correctly reflect a transgender individual's identity.

It should also be recognised that, as with the potential for a person's religion or belief being inferred from their trusteeship of a particular charitable organisation this could also be true of transgender individuals.

- Gender:

The sector is dominated by women – a far higher percentage of women than men volunteer throughout the third sector. Two thirds of employees (70.6%) are female.¹⁸ This is not reflected in the more senior roles, however, with only 47% of women holding senior management roles and 40% of charity trustees being women.¹⁹

An individual's gender would not be shared by the Register, the record of removed charity trustees or the publication of accounts, however it could be indirectly captured and inferred due to naming conventions. In some instances, identifying those associated with certain organisations could lead to the revealing of information that could indirectly disadvantage people on the basis of their gender. For example, the location of a women's shelter might be revealed through the identity of a charity trustee, 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, trustees can apply for a dispensation if they feel that including that information is likely to jeopardise the safety or security of any person or premises as per section 3(4) of the 2005 Act²⁰.

- Race:

¹⁸ SCVO state of the Sector report 2020: [SCVO State of the Sector Report](#)

¹⁹ Third Sector's 2017 Diversity Survey results as referenced in: [Gender Equality In The Charity Sector. Is There Strength in Numbers? \(charityjob.co.uk\)](#)

²⁰ Charities and Trustee Investment (Scotland) Act 2005: [Charities and Trustee Investment \(Scotland\) Act 2005 \(legislation.gov.uk\)](#)

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Although the Register, the record of removed charity trustees and accounts collection would not overtly capture an individual's ethnicity, there could be an inference through a person's name in some cases. There are also charities that cater to specific BAME communities and refugees, a person's race or ethnicity could be inferred, correctly or incorrectly, by being associated with one of these organisations. The adult population in Scotland in 2019 was largely 'White: Scottish'/'White: Other British', with 89% of adults having reported these ethnic groups in 2019. Just over one in forty (3%) adults reported their ethnicity as 'Asian, Asian Scottish or Asian British' in 2019.²¹

- Religion:

Currently there are 4798 charities with the advancement of religion as a charitable purpose²² on the Register in Scotland. An individual's belief or non-belief will not be collected by the Register however if an individual is associated with an organisation run by or affiliated with a religious body then it might be inferred, correctly or incorrectly, that the individual holds the same beliefs as that organisation.

Engagement with large religious organisations has shown that the requirements of the Register will have a significant impact on a few of them due to the nature of their organisational structures²³, which would require large numbers of trustee details to be entered on the Register. These organisational structures are historical and based on belief and it has been argued that this association could result in discrimination and should be subject to dispensation.

- Sexual Orientation:

Although attitudes towards same sex relationships in Scotland have improved in recent years, with 69% of people surveyed stating that they consider them to be rarely/not wrong at all,²⁴ a Galop study found that of 1123 LGBT+ 64% of respondents had experienced some form of anti-LGBT+ violence or abuse.²⁵

²¹ Scottish Household Survey: Annual Report 2019: [Scottish household survey 2019: annual report - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-household-survey-2019-annual-report/pages/12.aspx)

²² OSCR Charity Register – Data found using [OSCR | Search](#) to scrutinise database.

²³ Church of Scotland response to Consultation on Scottish Charity Law 2019: [Response 640234508 to Consultation on Scottish Charity Law - Scottish Government - Citizen Space](#)
Church of Scotland response to Strengthening Scottish charity law consultation 2021: [Response 520871414 to Strengthening Scottish Charity Law Survey - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

²⁴ Sexual Orientation in Scotland 2017: Summary of Base Evidence: [1. Executive Summary - Sexual orientation in Scotland 2017: summary of evidence base - gov.scot \(www.gov.scot\)](#)

²⁵ Galop Hate Crime Report 2021: [Galop-Hate-Crime-Report-2021-1.pdf](#)

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As with religion and transgender above, if a person's sexual orientation could be inferred, correctly or incorrectly, from their trusteeship of a particular charity this could potentially lead to discrimination.

3. Extent/Level of EQIA required

As a result of the initial evidence gathering and consideration of the proposals laid out in the Bill there will have to be a full EQIA conducted.

The evidence and statistical analysis at this stage has been drawn from a broad range of sources. Statistics have mainly been gathered from the Scottish Household Survey 2019, third party research reports and from the two consultations that were published on the Bill in 2019 and 2021. The larger consultation published in 2019 received 307 responses – representations were made from 127 from individuals and 180 from organisations across the Third Sector. The second consultation, undertaken to further develop and refine the proposals published in 2021 addressed the fact that some of the responses in the original 2019 survey highlighted areas where greater consideration and discussion was needed before the Scottish Government could decide on the next steps. This received 100 responses from the sector.

A full list of references is provided at the end of this document.

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4. Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys, or consultations with relevant equality groups.

Characteristic²⁶: AGE

Evidence gathered and Strength/quality of evidence

National statistical data on internet use based on an individual's age – good general indicator of ability to use or comfort accessing an online service, such as submitting accounts or completing trustee details for an online register, based on an individual's age.

Source

Scottish Household Survey 2019-None

Data gaps identified and action taken

Alternative options are available for those unable or uncomfortable accessing online services on their own and the policy otherwise addresses the limited impact based on age.

Characteristic: DISABILITY

Evidence gathered and Strength/quality of evidence

National statistical data on disability and adult literacy – good strength of evidence however some of the research is now several years old.

Source

Scottish Household Survey 2019

Data gaps identified and action taken

Scottish Survey of Adult Literacies 2009-OSCR's online platform has been designed using the UKG Web Content Accessibility Guidelines and provides support to those with literacy difficulties such as dyslexia that go above those required by legislation.

Characteristic: SEX

Evidence gathered and Strength/quality of evidence

Statistical data from national sources, the Scottish Council of Voluntary Organisations (SCVO) and research referenced in reliably sourced articles. Strong data indicating the number of women in trustee and senior management roles across the sector.

Source

SCVO state of the Sector report 2020

Female Leadership in Charities and the Third Sector, Brett Nicholls Associates

Third Sector's 2017 Diversity Survey results as referenced in: Gender Equality In The Charity Sector. Is There Strength in Numbers? (charityjob.co.uk)

²⁶ Refer to Definitions of Protected Characteristics document for information on the characteristics

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Data gaps identified and action taken

None – individuals will be able to apply for dispensation of their details being included on the external Register if this is likely to jeopardise the safety or security of any person or premises.

Characteristic: PREGNANCY AND MATERNITY

Evidence gathered and Strength/quality of evidence

We are not aware of any relevant existing evidence at this time on pregnancy and maternity in relation to the legislation.

Data gaps identified and action taken

N/A-No evidence gaps were identified as the policy will not capture information on this characteristic directly nor is expected to capture it indirectly.

Characteristic: GENDER REASSIGNMENT

Evidence gathered and Strength/quality of evidence

We are not aware of any relevant existing evidence at this time on gender reassignment in relation to the policy.

Individuals are able to update their name on the trustee database and the Register should their details change.

Characteristic: SEXUAL ORIENTATION

Evidence gathered and Strength/quality of evidence

National statistical data and external survey source from Galop study of LGBT+ hate crime – Good and reliable evidence.

Source

Galop Hate Crime Report 2021

Sexual orientation in Scotland 2017: Summary of Evidence Base

Data gaps identified and action taken

None – individuals will be able to apply for dispensation of their details being included on the external Register if this is likely to jeopardise the safety or security of any person or premises.

Characteristic: RACE

Evidence gathered and Strength/quality of evidence

National statistical data on composition and characteristics of households in Scotland – good strength of evidence.

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Source

Scottish Household Survey 2019

Data gaps identified and action taken

None – individuals will be able to apply for dispensation of their details being included on the external Register if this is likely to jeopardise the safety or security of any person or premises.

Characteristic: RELIGION OR BELIEF

Evidence gathered and Strength/quality of evidence

National statistical data on composition and characteristics of households in Scotland and evidence of charitable purpose provided by the OSCR Charity Register– good strength of evidence.

Source

Scottish Household Survey 2019

OSCR Charity Register

Data gaps identified and action taken

None – individuals will be able to apply for dispensation of their details being included on the external Register if this is likely to jeopardise the safety or security of any person or premises.

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Do you think that the policy impacts on people because of their age?

The overall aim of the Bill is to strengthen and update the current legislative framework for charities registered in Scotland. The Bill is broadly focused on increasing transparency and accountability 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. There is no direct impact on individuals that has been identified in this assessment that would impact on an individual as result of their age.

Do you think that the policy impacts disabled people?

No direct impacts on the protected characteristic of disability have been identified in this assessment.

Do you think that the policy impacts on men and women in different ways?

No direct impacts on the protected characteristic of sex have been identified in this assessment.

Any secondary impact that could result from an individual facing discrimination, or those who wish to remain anonymous for their safety, for example, through possible identification of domestic abuse survivors can be mitigated by the ability to apply for a dispensation from their data being published on the Register.

Do you think that the policy impacts on women because of pregnancy and maternity?

No direct impacts on the protected characteristic of pregnancy or maternity have been identified in this assessment.

Do you think your policy impacts on people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex? (NB: the Equality Act 2010 uses the term 'transsexual people' but 'trans people' is more commonly used)

No direct impacts on the protected characteristic of gender reassignment have been identified in this assessment.

Do you think that the policy impacts on people because of their sexual orientation?

No direct impacts on the protected characteristic of sexual orientation have been identified in this assessment.

Do you think the policy impacts on people on the grounds of their race?

No direct impacts on the protected characteristic of race have been identified in this assessment.

Do you think the policy impacts on people because of their religion or belief?

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No direct impacts on the protected characteristic of religion or belief have been identified in this assessment.

Any secondary impact that could result from an individual facing discrimination through their religion or belief being inferred from the data held on the register are mitigated, in some part, by data protection legislation and the option to apply for a 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 2005²⁷ and would continue to remain in effect.

Do you think the policy impacts on people because of their marriage or civil partnership?

The overall aim of the Bill is to strengthen and update the current legislative framework for charities registered in Scotland. The Bill is broadly focused on increasing transparency and accountability 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.

²⁷Charities 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 \(legislation.gov.uk\)](#)

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?

While no direct impacts have been identified, we have considered that there is potential, particularly with respect to the requirement on OSCR to publish the statements of account for all charities, to include charity trustee names in the Scottish Charity Register and to keep a publicly searchable record of removed charity trustees, that an individual's protected characteristics might be inferred.

Is the policy directly or indirectly discriminatory under the Equality Act 2010²⁸?

There is no evidence, so far within this interim EQIA that the policy is directly or indirectly discriminatory under the Equality Act 2010.

If the policy is indirectly discriminatory, how is it justified under the relevant legislation?

N/A

If not justified, what mitigating action will be undertaken?

N/A

²⁸ See EQIA – Setting the Scene for further information on the legislation.

Describing how Equality Impact analysis has shaped the policy making process

The equality impact analysis has not had a wide-ranging impact on the development of the policy, as many of the issues highlighted by the analysis were already addressed and mitigated against in the policy design.

This impact assessment has highlighted a need to ensure that the facility for individuals to request their details not being published is fair and reasonable. While there is already a facility for individuals to apply for dispensation of their details being published this will have to be extended to include the new Trustee Registers, both internal and external, and the level of detail that may be published in the accounts. Any system for granting or denying these dispensations must be robust and consistent.

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 2005²⁹ and would continue to remain in effect. There may need to be further provisions added as the security dispensation does not necessarily cover other reasons for not wanting personal data being made public where there is no clear and present risk to the individual's security.

Monitoring and Review

OSCR, will be responsible for monitoring and evaluating the policy.

A key policy driver for the proposals is to improve public trust and confidence in the charity sector and in OSCAR as the regulator. OSCAR conduct and publish the findings of periodic surveys³⁰ which measure and quantify public perception of the regulator and trust in the sector. They will use future surveys to gauge the impact of the new measures in the Bill. Website analytics will record the number of views of charity accounts and any guidance, news stories or other items OSCAR publish about the new measures. OSCAR will also log telephone and email enquiries by subject.

In the 2018 proposal paper³¹, in which the case was made for modernisation of the 2005 Act, OSCAR identified what they considered to be the key impacts for the charity sector. The majority of the Bill proposals are of a technical nature. They will not

²⁹Charities and Trustee Investment (Scotland) Act 2005: [Charities and Trustee Investment \(Scotland\) Act 2005 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2005/10/section/3)

Section 3: Scottish Charity Register: [Charities and Trustee Investment \(Scotland\) Act 2005 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2005/10/section/3)

³⁰ [OSCR | Public trust in charities increases significantly but transparency is still vital](https://www.oscr.org.uk/publications/2018-03-09-modernisation-of-the-2005-act-proposal-paper.pdf)

³¹ [2018-03-09-modernisation-of-the-2005-act-proposal-paper.pdf \(oscr.org.uk\)](https://www.oscr.org.uk/publications/2018-03-09-modernisation-of-the-2005-act-proposal-paper.pdf)

require all charities to take new or additional steps and some proposals will only impact upon those charities directly affected.

For example, the power to issue positive directions will only affect charities served with a direction notice. In this case OSCR will record the frequency and nature of directions issued, the level of compliance, the number of review requests received, and whether the directions have resulted in the desired improvements. Directions will require the publication of inquiry reports against a charity's Register entry and the increased visibility may generate enquiries from the public, media, MSPs etc. which will be logged.

Similarly automatic disqualification of charity trustees and others will only affect a very small number of charities faced with a potentially disqualified individual. But for those charities affected and for the individuals who are subject to disqualification, the impact is likely to be significant. OSCR will seek to measure any change in the rate at which individuals apply for waivers from disqualification, the proportion of applications that are approved, the numbers requesting a review or appealing OSCR's decisions. Disqualification is automatic so usually OSCR only learn of disqualifications if a waiver is sought. Future surveys might measure charities' awareness of changes in the disqualification criteria and whether they have been affected by them, but the latter is self-evidently a sensitive issue.

The proposals that will affect all charities are those that will result publishing accounts and trustee database and public register. All charities are already required to prepare and lodge accounts annually. The timescale for doing so and the format and content of accounts will not change. Defaulting charities and those preparing accounts that do not comply with required standards will be more immediately visible to anyone searching the Register. OSCR will measure what effect publishing accounts, combined with the new power to remove defaulting charities that fail to engage with them, has upon the number of defaulting charities. For a small number of charities, publishing accounts including trustee names may give rise to concerns about personal safety. OSCR will monitor the number and outcome of dispensation requests received. Charities will be asked to ensure that accounts are publication-ready by not including content that may result in a data protection breach if published. In the early phase of implementation OSCR will conduct sample pre-publication checks to ensure that their messaging is effective. Since charity accounts are already in the public domain (available on request) this is a matter of good practice that they should be following in any case. By drawing attention to this OSCR hope to drive up the standard of accounts and reports.

Implementation of a trustee database represents the most significant additional duty upon charities to ensure that it is populated with the details of their trustees and kept accurate and up to date. Charitable companies and Scottish Charitable Incorporated Organisations (SCIOs) are already required to maintain their own registers of

directors/trustees containing most of the information the database will collect. The impact will be greatest upon charities with a large trustee body and/or a high turnover of trustees. OSCR will monitor compliance with the requirement to provide trustee data and will undertake selective sampling (randomised or risk-based) to check compliance and accuracy. OSCR will monitor enquiries, requests for assistance, views of guidance and requests for dispensations. They will also monitor any change in the number of subject access requests. It is likely that the database functionality will be developed over time and that the user interface will be improved through experience. OSCR will monitor any trends and frequently occurring difficulties and refine the system based upon user feedback. As with other online interactions, OSCR will continually review accessibility and provide alternative means for individuals and charities facing difficulty with digital capacity.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g., in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Not applicable

Declaration

I am satisfied with the equality impact assessment that has been undertaken for the Charities (Regulation and Administration) (Scotland) Bill and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Jane O'Donnell

Position: Deputy Director Community Empowerment, Reform and Governance

Authorisation date: 3 October 2022

References

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- [SCVO State of the Sector Report](#)
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- [OSCR | Online Services](#)
- [Understanding WCAG 2.1 - Service Manual - GOV.UK \(www.gov.uk\)](#)
- [OSCR | Submit an annual return](#)
- [OSCR | Public trust in charities increases significantly but transparency is still vital](#)
- [2018-03-09-modernisation-of-the-2005-act-proposal-paper.pdf \(oscr.org.uk\)](#)

Charity legal forms and accounts publication requirements

Legal form

Unincorporated Associations

Number of charities³²

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.

³² Correct as of 13 June 2022

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.

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

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 -26,679³³

³³ 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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The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80525-229-0 (web only)

Published by The Scottish Government, November 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1194402 (11/22)

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