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Myra Watson
Charity Bill Consultation
Voluntary Issues Unit
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Dear Ms Watson

Draft Charities and Trustee Investments (Scotland) Bill Consultation

Scottish Environment LINK member bodies (listed over), which between them represent around half a million supporters, warmly welcome the draft Charity Bill and the proposed, much-needed, revision of conditions for charities operating in Scotland. Scottish Environment LINK members have supported the call by the Scottish Council for Voluntary Organisations for charity law reform. Members are delighted to see this emerging and welcome the open and constructive nature of the pre-legislative consultation.

A number of LINK's member bodies will be submitting individual responses. This collective submission is limited to issues which are of shared and key concern to LINK's membership (as well as to many others within the wider voluntary sector).

Independence

Scottish Environment  The voice of Scotland's environment mover

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The paper's intent to build on the value which charities deliver to Scottish society and its emphasis on the importance of their independence from government are both welcomed. Developments, particularly in recent decades, have blurred the issue of independence considerably, so that we now have a norm where bodies set up by and appointed by government to pursue government policy may hold charitable status.

LINK member bodies believe that that it is critical for the new legislation to safeguard the concept that charitable operation is firmly linked to voluntary effort by interested citizens to achieve change and to protect this from any confusion with the achievement of government policy – no matter how positive the impact of that policy may be on society in general.

The consultation proposes that independence can be achieved through regulation of the duties of board members once appointed. LINK bodies, on the other hand, maintain that the key issues are where the impetus for a charity originates and who appoints its board. LINK members are strongly resistant to the possibility that bodies established, appointed or directed by government, should continue to be able to have charitable status.

Members therefore advocate inclusion of a clause in the Bill to state that in order to be a charity an organisation must be independent of government (whether central government, local government, agency or wholly-owned government subsidiary). LINK members endorse the McFadden recommendation that an absolute maximum of one third of a charity's board members may be appointed by government. It is critical that the majority of a charity's board members are elected by ordinary citizens to whom they remain accountable for governance of the charity.

Charitable status is a pre-requisite for membership of LINK in Scotland. However, there is also a requirement for charities joining LINK to demonstrate the voluntary nature of their governance and operations (extract from LINK Operating Principles attached).

Definitions

The proposed expansion of charitable purposes is a great step forward. From LINK members' perspective it is good news to see environment, heritage, culture, civic responsibility, community development and amateur sport appear, although members welcome the other headings and the possibility for this list to develop in response to changing needs in future.

LINK members support the need for ongoing 'fit' with definitions for England and Wales (and Northern Ireland). In the draft Bill, we believe Section 7, 2 (m) should read "public" rather than "community" as the introduction of the latter term here may confuse and cause alternative interpretation which could be unhelpful.

Public Benefit

LINK members believe it is important that interpretation of, and criteria for, 'public benefit' are set out in accompanying guidance, applied by statute to accompany the legislation, approved by Parliament, and adjustable in a public and accountable way.

It is important that the legislation explicitly recognises the potential for non-financial benefits resulting from the work of many charities – benefits which are measurable in terms other than financial and whose production is important to certain classes of beneficiaries.

The legislation should also ensure that the public “benefit” cannot be confused with the public “interest”, perhaps especially where non-financial benefits arising from charitable effort are concerned, and where the work of a charity pursuing its objective challenges what may be understood by some to be the public interest. Explicit reference in the Bill will prevent costly challenges further down the line.

Dual regulation & reporting

LINK member bodies endorse the need for charities to be accountable in those countries and legal systems in which they operate. Over one third of LINK’s full member bodies are UK charities, registered with the Charities Commission; other member bodies are recognised as charities in Scotland though one or two have offices and operations south of the border.

These organisations appreciate that regulators in different countries may require the same information about a charity’s operations. They would be concerned, though, at the demand on charitable resources which would result if a regulator in one country began to require different information from the regulator in the other country, or to seek disaggregated information in relation to one country only. Whilst LINK members welcome the intention that OSCR will cooperate with other regulators to minimise the burden of registration and reporting and avoid requiring disaggregated information, they would prefer greater certainty and suggest that the Bill should introduce a principle of reciprocity, whereby information which meets the requirements of the regulator in the jurisdiction where an organisation has its UK headquarters will be deemed sufficient for the purposes of regulators in other countries where they operate.

Furthermore, these organisations would welcome further clarity on the face of the Bill about the requirement for regulators to cooperate, and suggest amendments at Section 23 as follows:

- At Section 23 (1), omission of “seek to” so as to read
“OSCR must, so far as consistent with the proper exercise of its functions, secure cooperation between it and other relevant regulators.”
- Within Section 23, inclusion of a definition of “cooperation” to indicate that regulators will liaise to ensure parallel parity of standards and requirements.

This point also relates to fundraising activity by UK charities (see below).

OSCR

We note the options for the form of OSCR and the suggested preferred characteristics for the regulator. LINK members would support the form as either a Non-Ministerial Department or a Parliamentary Commission and see

- public accountability
- independence
- transparency

as critical to the regulator’s effectiveness.

Members would wish appointments of both board members and staff of OSCR as being demonstrably independent of government and/or other direction. They propose that, to combine the benefits of a non-ministerial department *and* a parliamentary commission, the legislation should state that the appointments by Scottish Ministers to OSCR, referred to in Schedule 1, clause 1 (1), should be subject to affirmative resolution by the Scottish Parliament.

It will be important that OSCR is able to draw for expertise from within the sector for which it is responsible. Whilst it should not be influenced unduly by either the sector or by government, LINK members propose that a minority of OSCR's board members should be able to be drawn from within the sector and that this kind of advisory function should be also legitimately available to OSCR in its wider operations. In Schedule 1, LINK members therefore propose that clause 1, 2 (e) should be deleted, whilst ensuring that charity trustees cannot be in a majority on the board of OSCR or its sub-committees.

Charity stewards – the term

Whilst LINK members recognise the Executive's reasons for proposing the term "charity steward" they believe the change would be unnecessary and potentially confusing. They would prefer to use the term "charity trustee".

Fundraising

LINK member bodies support the measures proposed and believe self-regulation is the correct approach and important for the sector. A clear code of practice, backed up by advice from OSCR, should prevent malpractice.

Linking back to the issue of dual-regulation, the legislation will need to accommodate UK-wide appeals by some charities, without imposing new burdens of permissions and reporting. Some clarification may be necessary in the Bill.

Scottish Charitable Incorporated Organisations

LINK members would appreciate the opportunity to be involved in further consultation on this issue.

Proportionality

Members welcome the indications that different sizes of charity will be required to provide proof of compliance in ways appropriate to their circumstances and look forward to being involved in further consultation on the details of proportionality, the thresholds and so forth. Even amongst LINK's full (voting) member bodies there is a wide range of turnover, ranging from a few £hundreds per year, to £millions. Members welcome the intention that regulators will continue to recognise resource limits, tailor requirements and/or support accordingly and so support development of a healthy and diverse sector.

Existing charities

The draft Bill does not appear to make provision that all organisations currently recognised as Scottish charities should continue to be recognised as such and be deemed capable of being called “registered” Scottish charities. Members therefore propose that a transitional provision should be included in the Bill to provide automatic registration of all existing charities or at least continued recognition for several years during which recognised charities can apply to be registered.

Thank you for the opportunity to respond to this consultation. LINK members look forward to working with the Executive as this legislation goes through Parliament.

Yours sincerely

Fred Edwards
LINK President

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