

Trusts and Succession (Scotland) Bill

Scottish Parliament
Delegated Powers and Law Reform Committee

OSCR's response to the stage 1 consultation - 16 March 2023

About OSCR

The Scottish Charity Regulator (OSCR) is the independent registrar and regulator of Scotland's more than 25,000 charities. It is a Non-Ministerial Office of the Scottish Administration, established in its present form in 2006 under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act). It reports directly to the Scottish Parliament. OSCR's general functions are:

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

OSCR's strategic vision, set out in our Corporate Plan 2020-23, is for a trusted and respected Scottish charity sector that positively contributes to society.

General response

OSCR welcomes the opportunity to respond to the Delegated Powers and Law Reform Committee's consultation on the Trusts and Succession (Scotland) Bill and to express our general support for the provisions it contains for restating, consolidating, clarifying and reforming the law on administration of trusts. The following information is offered for context.

There are currently 3,292 active charitable trusts in the Scottish Charity Register (the Register). This represents approximately 13% of all registered charities. As a proportion of the Register, the number is slowly declining as new applicants for charitable status tend to prefer other legal forms offering the advantages of incorporation. Nevertheless, trusts continue to play an important role in the Scottish charity sector, particularly as holders of charitable property and disbursers of grant funding for public benefit.

Many of the trusts in the Register are old. More than 2,250 were first recognised for charitable tax relief before the Register was established in 2006 and over 140 of those were founded at least a century ago. OSCR has found that older Trust Deeds frequently lack modern provisions for administration and governance and are silent on matters such as trustee appointment, powers and decision-making.

Trust Deeds also commonly lack express provision for amendment or for dissolution. Under the 2005 Act OSCR may, subject to certain conditions being met, approve reorganisation schemes by which charitable trusts can vary their Trust Deeds, including modernisation of their charitable purposes, or to wind up and transfer their property to other charities. This function of OSCR provides a simplified and affordable route to reorganisation rather than through the Court of Session and it has enabled many trusts improve their administration or use their assets to better effect. In the past four years OSCR has approved 301 reorganisation schemes.

In OSCR's experience, absence of a provision in a Trust Deed, outdated trust law and trustees' lack of awareness of that law can result in charitable trusts becoming dormant or underactive. OSCR has identified around 250 charitable trusts that, over the past five years, have reported zero income and expenditure or very low levels of spend on activities that provide public benefit. In our view, provisions in the Bill for improved administration of trusts will be helpful in addressing these concerns.

Specific questions

What are your views on the proposals contained in Chapter 1?

Agree.

Some older charitable Trust Deeds do not make express provision for the appointment of additional or successor trustees or for their resignation. It is helpful to have the powers of trustee resignation and assumption in section 3(a) and (b) of the 1921 Act restated in modern legislation.

We welcome removal of the prohibition on remunerated trustees from resigning office. Charity trustees are under duty to act at all times with care and diligence in the interests of the charity. It would be unhelpful if trustees were forced to continue in office against their will as a result of having accepted remuneration.

We also welcome provision for the non-judicial removal of trustees by co-trustees as a quick and affordable means of removing trustees in the circumstances prescribed in section 7 of the Bill. In the case of a charitable trust, a person with an unspent conviction for an offence involving dishonesty is already automatically disqualified as a charity trustee.

What are your views on the proposals contained in Chapter 2?

Agree

Older Trust Deeds are often silent on rules of procedure for trustee decision making. The provisions in Chapter 2 of the Bill provide a helpful default procedure in the absence of provisions in a Trust Deed. We consider this will reduce the likelihood of indecision by or dispute among trustees.

What are your views on the proposals on advances to beneficiaries?

No view.

What are your views on the rest of the proposals contained in Chapter 3?

Agree

We welcome the introduction of a general power for trustees to act in relation to trust property as if they had beneficial title to that property as individuals. For trustees of charitable trusts this will have the benefit of greater consistency with the general power of trustees of charities of other legal forms such as companies and Scottish charitable incorporated organisations (SCIOs).

We also welcome the codification of a trustee's duty of care and diligence in the terms expressed in section 27 of the Bill. This is consistent with the standard of care expected of charity trustees when managing the affairs of a charity and reflects their position as custodians of assets held for the benefit of others.

What are your view on the proposals on court powers to change trust purpose in Chapter 8?

No view

Section 61 provides for the powers of the Court to alter the purposes of private purpose trusts. Private purpose trusts are not charities and are not regulated by OSCR.

No view expressed on other matters relating to private purpose trusts or to provisions for succession in cases of intestacy.