

Response from the Scottish Charity Regulator Consultation on Freedom of Information coverage extension

1. Background

1.1 The Scottish Charity Regulator

The Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) as a Non-Ministerial Office forming part of the Scottish Administration. We are independent of Scottish Government and report directly to the Scottish Parliament every year.

We are the independent regulator and registrar for over 24,000 Scottish charities including community groups, religious charities, schools, universities, grant-giving charities and major care providers. Our work as Regulator ultimately supports public trust and confidence in charities.

Scottish charities come in all shapes and sizes. The work they do is extremely varied and has a huge impact on Scottish society.

1.2 Makeup of the Scottish charity sector

Before looking at the consultation it is important to understand the context of the charity sector in Scotland.

Over 50% of charities registered in Scotland have an income of less than £25,000 per year. Only 6% of charities have an annual income of more than £500,000. In 2016 68% of Scottish charities reported that they have no paid staff.¹

Therefore, any extension to FOISA which brings charities into the scope of the regime needs to be viewed in the context of a sector comprised of small organisations with limited resources.

¹ [Figures taken from OSCR Annual Review 2018-19](#)

2. Consultation response

We understand this consultation is intentionally broad and viewed as the start of the engagement with the third sector. This reflects the commitment set out in the section 5 report from 2017.

From our current data it is unclear how many charities could be exercising functions of a public nature or under a contract with a Scottish public authority, however, we know the number is likely to be significant. The recent Scottish Parliament Equalities and Human Rights Committee report [Looking ahead to the Scottish Government's Draft Budget 2020-21: Valuing the Third Sector](#) states that around 25% of third sector income comes from public sector contracts.

We are aware that there are already a number of categories of charities that are subject to the FOISA regime, for example Independent Special Schools, Further and Higher Education bodies and Registered Social Landlords. OSCR supports the overall principles of FOISA and increasing the transparency of those carrying out public functions.

2.1 Impact of proposed extension

In order to be able to fully understand the impact of the proposals on individual charities it is first important to clearly define the functions that will fall within the scope of any extension. The types of contract caught by any extension can then be identified.

OSCR urges Scottish Government to undertake work to establish how many contracts are likely to be caught by any proposals and how many of those are with charities – we would be happy to assist in identifying the charities. This will then enable Scottish Government to carry out a specific impact assessment on the charity sector, as the categories of charities already designated under FOISA are largely unrepresentative of the wider sector.

Charities and their representative organisations will be much better placed to provide examples of what unintended consequences could flow from the proposed FOISA extension. However, we are aware of existing issues with charities and public authority contracts including charities being unwilling or unable to bid for contracts due to administrative burdens, charities giving back contracts and public authorities bringing services back in house due to a lack of service providers.

88% of the public say that 'Knowing how much of my donation goes to the cause' is a driver for public trust and confidence.² There is the potential for public trust, which is vital for the success of the charity sector, to diminish if they perceive that donated funds are being used to respond to FOI requests as part of wider administrative functions. Public concerns over the use of donations to fund overheads and administrative costs is well known within the sector and funding environment.

Depending on how the proposals develop, Scottish Government may wish to consider a FOISA fund for the voluntary sector that can be used for training and support, improvements to record management aimed at facilitating compliance, assistance to deal with complex requests and/or reviews and appeals. This is particularly relevant given the complex interplay between FOISA and Data Protection and the amount of personal data that may be caught by a request to a charity providing services under contract such as health and social care.

The funding pressures on the charities that deliver public services are well known to Scottish Government. An individual charity's ability to deliver services and the ability to comply with FOISA may at times be incompatible with the resources available to them at that time.

The Scottish Parliament Equalities and Human Rights Committee report referred to above concludes that:

'the Committee found third sector organisations across many sectors – not least the social care sector – are feeling the brunt of these [Local Authority] budget pressures. They are struggling to provide adequate services for the prices councils are able/willing to pay. This situation needs to be reviewed urgently.'

We would strongly suggest that as policy positions are formulated, Scottish Government consider and test a variety of possible exclusions to extension, for example based on:

- organisation size
- income
- staffing levels
- contract value
- contract length.

² [OSCR public and charity surveys](#)

Scottish government should also consider what the impact on cross-border charities (those registered in both Scotland and England and Wales) who contract with Scottish public authorities could be. OSCR would be happy to help to identify those cross-border charities and facilitate engagement with the Charity Commission for England and Wales if necessary.

2.2 Charity law and transparency

Existing regulation already provides for a greater degree of transparency for charities. Under section 23 of the 2005 Act, charities are required to supply a copy of their constitution and/or the latest examined or audited accounts to anyone who makes a reasonable request for them. We also publish the accounts of all SCIOs and of other charities with an annual income of at least £25,000 on the [Scottish Charity Register](#).

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

3. Conclusion

OSCR supports increased transparency in the public sector and in the charity sector. We are seeking changes to Charity law in order to achieve this aim for the charities we regulate.

We welcome the opportunity to respond to this consultation. Given the potential impact on the charity sector, in particular on small and medium sized charities, we believe that further engagement is vital as this work progresses. Finding ways to work with OSCR, sector representatives and umbrella organisations to look at ways to fully engage the sector, bearing in mind the ability of many individual charities to resource such engagement, will be crucial.

We are content for the information provided to be released in full, including contact details. Should you wish to discuss any aspect of the response please contact:

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