

PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE

POST LEGISLATIVE SCRUTINY - FREEDOM OF INFORMATION (Scotland) ACT 2002

SUBMISSION FROM The Scottish Charity Regulator (OSCR)

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 Department forming part of the Scottish Administration. OSCR is the registrar and regulator of charities in Scotland. There are currently over 24,500 charities registered in Scotland. We are independent of Scottish Government and report directly to the Scottish Parliament every year.

We understand the committee is to consider whether:

1. the policy intentions of the Freedom of Information (Scotland) Act 2002 have been realised and are being delivered; and
2. whether any further legislative or non-legislative changes are required to improve the effectiveness of the Freedom of Information (Scotland) Act 2002.

We are providing two responses to this call for evidence, one from OSCR's perspective as a Scottish Public Authority subject to FOISA and one in our role as the registrar and regulator of charities in Scotland.

This submission focuses on the second area of consideration, changes to FOISA and the potential impact this could have on the charity sector.

We understand the argument for extending FOISA is where an organisation: 'appears to the Scottish Ministers to exercise functions of a public nature or which provide, under a contract with a Scottish public authority, a service which is a function of that authority.'

Depending on how any future extensions to FOISA are defined, there is a potential to capture many charities, the impact of which could be substantial. We outline below the make up of the Scottish charity sector, which is comprised of many small, local organisations.

Scottish charity sector

Of the 24,500 charities in Scotland, 52% have an income of less than £25,000 p.a. and the vast majority of charity trustees serve unpaid.

The main types of legal form or structure for Scottish charities are:

Legal form	Percentage of charities
Unincorporated associations	46%
Companies	20%
Trusts	14%
Scottish Charitable Incorporated Organisation (SCIOs)	14%

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.

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.

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](#).

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 are concerned about the potential regulatory impact of extending FOISA in a way which could capture many small and medium charities who may not have the resource required to comply with the regime. We would welcome further discussions with ourselves and representatives in the charity sector about future extensions to FOISA.

Should you wish to discuss any aspect of the response please contact:

Caroline Monk: Engagement Manager (Policy and Guidance)

caroline.monk@oscr.org.uk

01382 346839