

CES/CC-Sub/mb

Office of the Scottish Charity Regulator (OSCR)
2nd Floor
Quadrant House
9 Riverside Drive
DUNDEE
DD1 4NY

By email: info@oscr.org.uk

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Dear Sir or Madam

Draft guidance on the Scottish independence referendum

The ICAS Charities Committee is pleased to comment on OSCR's draft guidance for charities on the Scottish independence referendum.

General Comments

The Committee welcomes the guidance and believes that it goes some way to providing a good common sense approach for charity trustees when considering whether or how to engage in the debate on constitutional change. However, we recognise that a number of charities have expressed concerns about the guidance and we would urge OSCR to work with the sector to deliver guidance which both encourages charities' continued engagement in public life and policy development while reinforcing the Charities and Trustee Investment (Scotland) Act's requirements that a charity cannot be a political party or have as one of its purposes the advancement of a political party.

While charities are not permitted to pursue party politics, this is not a legal barrier to contributing views on policies developed by political parties or by government. The emphasis of the guidance is on directing charities to limiting engagement to policy issues which relate to their charitable purposes. However, charities also engage in wider issues which impact directly on the legal and regulatory environment in which they operate, for example, charities regularly comment and lobby on charity law matters and on charity tax reliefs. Therefore, the proposed guidance should recognise this wider context.

We are not aware of any specific legal barriers which would prevent charities taking a position on Scottish independence, although we acknowledge that there are aspects of charity law which may inhibit a stance being taken and these are addressed in the guidance. We believe that charities should remain neutral with regard to the outcome of the referendum and should not be seen as campaigning by their supporters, donors, beneficiaries or the public. However, this in no way means that we believe charities should not engage in discussions about the implications of independence or raise questions for either side of the debate. In fact, we believe it is vital that they do. Among other things, the risk appetite of a charity's trustees will determine the extent of any engagement.

Specific Comments

We have the following comments on the three key questions covered by the consultation:

Question 1

Do you think the guidance is helpful?

Response

We believe that the guidance will be helpful to charity trustees, although it requires refinement. We also believe that the guidance should consider charities' own risk appetites as part of its context and the legitimate interest of charities in the wider implications of independence for their future operations.

The economic and political climate should already be appearing in the risk assessments of most charities so the position to be taken towards the independence referendum by a particular charity should already be taking shape. Therefore, references to risk management generally should be more prominent within the guidance so that charities are certain that any position they adopt is within their own risk appetite. In particular, we would recommend highlighting within the guidance that trustees, in analysing the potential impact of independence, have the potential impact on their beneficiaries to the forefront of discussions.

We are aware of examples of charity trustees considering the potential implications of Scottish independence for their charity's operations as part of the board's risk management activities, including consideration of the possible impact on funding received from organisations based in the UK but outside of Scotland. Therefore, charity trustees are keen to see the content of the Scottish Government's white paper on independence, which is to be published in autumn 2013, so that they can consider the possible implications of policy positions on their charity. We believe it is important for the sector to be able to engage in public debate on the content of the white paper and to raise issues which impact on the sector generally, which may not be specific to a particular charity's objectives. We recommend that the guidance encourages the sector to participate in this debate.

Question 2

Are the practical examples useful?

Response

We believe that the practical examples will be helpful for charities who are considering how to engage appropriately around the topic of the independence debate. However, we recommend that the examples included in the table should be expanded to cover engagement on those wider issues such as proposed policy positions and proposed changes to law and regulation, which charities can legitimately take a position on.

We also have a specific comment on the proposed draft answer to question 7 in the guidance:

We are not sure that the answer to question 7 about accepting funding from a body that openly supports a "yes" or "no" vote goes far enough, as there is a risk that a charity could be associated with the funding body's position by default. Many funding bodies state in their annual and other published reports which charities they have funded. When accepting funding, charities may find it advisable to consider whether they should request anonymity to avoid this possibility.

Question 3

Are there any important questions we've not covered?

Response

We have no additional comments to make.

Please do not hesitate to contact me if you would like to discuss our response further.

Yours faithfully



CHRISTINE SCOTT
Assistant Director, Charities and Pensions