



Targeted regulation of Scottish charities

RESPONSE FROM ICAS TO OSCR

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Introduction

The ICAS Charities Committee welcomes the opportunity to comment on OSCR's proposal for the targeted regulation of Scottish charities.

Our CA qualification is internationally recognised and respected. We are a professional body for over 20,000 members who work in the UK and in more than 100 countries around the world. Our members represent different sizes of accountancy practice, financial services, industry, the investment community and the public and charity sectors.

Our Charter requires ICAS committees to act primarily in the public interest and our responses to consultations are therefore intended to place the public interest first. Our Charter also requires us to represent our members' views and to protect their interests, but in the rare cases where these are at odds with the public interest, it is the public interest which must be paramount.

Key points

We support the idea of targeted regulation in principle and we fully support OSCR's plans to publish annual reports and accounts on its website. However, we believe that there are significant weaknesses in the proposals for the future regulation of Scottish charities which, if unaddressed, could mean that targeted 'risk based' regulation would not be achievable. We are also not convinced that the Serious Incident Reporting regime as currently envisaged will work in practice.

We are concerned that the proposed questions in the annual return will not capture the information needed by OSCR to identify those charities which pose a risk to charitable assets and to the sector's reputation. Only a charity's income is used to determine the level of information gathered in the proposed Annual Return where other features, such as number of volunteers and employees, combined with income would, in our view, be more effective in assessing where the greatest risks may be present.

The questions themselves focus to a large extent on day to day matters rather than on charity governance and risk management arrangements. We recommend that the questions are amended so that OSCR can take a view on the effectiveness of a charity's governance arrangements rather than on the minutiae of internal controls, which should be examined by an independent examiner or auditor. If OSCR has concerns about the independent examination regime, then we believe it would be better to address weaknesses in the regime rather than to rely on self-declaration by charities.

We are concerned about OSCR's plans to substantially reduce its checking of charity accounts as we believe that this could increase the risk of non-compliance with regulations and could result in risks to charitable assets or the reputation of the sector being less likely to be identified. For example, we believe that OSCR should continue to apply a number of triggers to identify exceptions which need to be explained by the charity in the first instance. There is no specific mention in the consultation as to the future of the triggers which currently apply to charities preparing the supplementary monitoring return.

We believe that there are likely to be significant practical difficulties in the implementation and operation of the Serious Incident Reporting proposals in the consultation paper. The paper does not identify and then seek to address these practical difficulties, such as the reporting of incidents by charities which operate in war zones. Until proper consideration is given to these, we do not support the introduction of such a regime.

Our responses to the consultation questions and the respondent information form are included in the Annex.

Any enquiries should be addressed to Christine Scott, Assistant Director, Charities and Pensions, at cscott@icas.org.uk.

Consultation questions

Question 1

We welcome comments on the new questions being posed specifically:

- (a) Are the questions clear and understandable?
- (b) Is more guidance needed to help understand what the questions mean? – if so, please explain which questions need this.
- (c) Will the new questions affect the ease of use of the Annual Return?

Answer 1

We are not convinced that the proposed questions for the new Annual Return will deliver the risk-based approach to regulation envisaged by OSCR. There appears to be an over reliance on self-declaration when the content of questions and OSCR's proposed approach to accounts reviews are viewed as a whole.

By asking charities with an income above £25,000 to provide additional information, the proposed approach links the income of the charity to risk and we believe that this needs to be decoupled. We understand that this is driven by the profile of the sector. However, we believe that the risk to the reputation of the sector does not necessarily sit solely with charities above the £25,000 income threshold.

Other factors in addition to income are relevant to risk, for example, expenditure, assets, number of employees and volunteers and over reliance on contractors (which could be indicative of disguised employment). We believe that some additional risk factors could be captured through the use of triggers and we make further comment on the use of triggers in our response to question 7.

We believe that the detailed nature of the proposed questions in the return, for charities with an income of above £25,000, would amount to micro-management of the sector and do not necessarily deal with governance issues which charity trustees should deal with routinely. The questions focus too much on the minutiae of internal controls where they should really focus on governance and risk management arrangements. For example, it would be more valuable to ask questions such as 'How do you know the charity is complying with rules and regulations?'

In relation to question B3 of the proposed questions in Annex 1, the bullet point on the provision of management information is appropriate. However, the issues covered by the remaining bullet points should be covered by the independent examination or audit process.

In relation to question B5, the content of the question should be around risk management not on the detailed content of training received by trustees.

Taking the above comments together, the proposals give the impression that OSCR does not have faith in the independent assurance regime as it currently stands. If this is the case then changes should be made to the independent examination regime to address this issue, for example, to extend the requirement for a 'qualified' examiner to all charities. However, we recognise that the payment of independent examiners becomes more of a challenge if the pool of potential examiners is reduced and there is a greater reliance on individuals who have professional qualifications.

If the independent examination regime is perceived by OSCR not to be delivering its objectives, then we recommend that a review of the independent examination regime is undertaken and any new proposals are subject to public consultation. We appreciate that changes to the regime may require the amendment of the Charities Accounts (Scotland) Regulations 2006 (as amended) which would be outside the scope of OSCR's powers and would require the co-operation of the Scottish Government. Now that the Charities and Trustee Investment (Scotland) Act 2005 has been in place for nearly a decade, we support OSCR in its desire to see the 2005 Act reviewed. A review of the independent examination regime could form part of this wider review.

Question 2

As some of the questions are quite different from those previously asked, is there more that the Scottish Charity Regulator could do to support charities in terms of producing guidance or self-help resources?

Answer 2

We have no specific suggestions to make on the production of further guidance about the annual return or annual return process.

Question 3

Do you support the retention of a threshold of £25,000 for the requirement of more detailed information?

Answer 3

Yes

No

We have answered 'No' to this question as we believe that a charity's income is being used as a proxy for risk and that income and risk should be de-coupled.

This does not mean that we support the extension of the questions in section B to all charities as we have significant concerns about the proposals more generally.

Question 4

How can OSCR encourage and support all charities to use online services?

Question 4

We have no specific comments on how to encourage charities to use online services. However, we do support the move towards a position where online filing is the default position with paper-based returns being submitted by exception.

Question 5

Would it be helpful for the Scottish Charity Regulator to provide specific guidance on Trustees' Annual Reports for smaller charities?

Answer 5

Yes

No

In answering this question, we view illustrative examples as the most appropriate means of providing guidance on the Trustees' Annual Report.

The consultation paper does not include a definition of 'smaller'. However, we are generally supportive to the development of illustrative annual reports and accounts.

In our response to OSCR and the Charity Commission's consultation on the proposed Charities SORP we made the following comments on illustrative reports and accounts:

"We believe that charities and their advisors find illustrative reports and accounts helpful and we would therefore support the publication of examples for different types and sizes of charity which are relevant to all the jurisdictions where the SORP is applicable. In preparing illustrative reports and accounts, the SORP Committee should seek to demonstrate how conciseness can be achieved without compromising compliance."

We acknowledge that OSCR already publishes, on its website, illustrative annual reports for charities preparing receipts and payments accounts. If further annual report examples are published we would urge OSCR to ensure that these examples differentiate between legal requirements and additional good practice material. We believe it is important that trustees do not feel obliged to move beyond legal compliance but instead understand that they can do so if they wish.

Question 6

Do you agree with the proposal to publish accounts for all charities, beginning with SCIOs and charities with income of £25,000 or more?

Answer 6

Yes

No

We support the proposal to publish the accounts of all charities. It makes sense to do this incrementally and to refine the process in light of experience.

Question 7

We have given examples of the benefits we expect to achieve from publishing accounts. Are there any others you would highlight or any risks that we should consider?

Answer 7

We agree that the publication of accounts will promote transparency and accountability and will meet some of the information requirements of stakeholders. However, we are less convinced about the benefits of public scrutiny of accounts. There may be some merit in the view that publication on the OSCR website could act as an incentive to charities to prepare compliant accounts.

There is no reference in the consultation document to the future use of triggers to identify exceptions. We believe that the use of triggers should continue but that these should be slimmed down from the 32 triggers currently applied. We would view the abandonment of the triggers as a retrograde step which could result in a decrease in the quality of charity accounts and a missed opportunity to deliver genuine targeted regulation.

We do not believe that the plans for limited targeted reviews of accounts supplemented by a random sample, along with the publication of accounts on the OSCR website will be sufficient to maintain quality.

Question 8

Would you view published accounts? If yes, for what purpose.

Answer 8

Yes

No

As a professional accountancy body, ICAS would access published annual reports and accounts to consider how charities are approaching the application of the reporting and accounting requirements in the new Charities SORPs. Information gathered from reviewing annual reports and accounts may be used to prepare articles for our website or technical articles for our members who support the sector.

Question 9

What benefits and risks would you highlight to OSCR when considering the development of a trustee database?

Answer 9

We support the analysis set out by OSCR in part 6 of the consultation document.

Question 10

Do you think the information stated above (which would be included in the trustee database) is appropriate for OSCR to collect and use for the purposes stated? Please explain why.

Answer 10

Yes

No

We support in principle the establishment of a database of trustees. However, there could be practical problems in gathering this information especially where a charity has a large number of trustees.

Question 11

Do you foresee any difficulties with collecting this information? If so, please explain.

Yes

No

We do envisage some difficulties as referred to in our answer to question 10.

There are exemptions in respect of the annual report and accounts from disclosing details of all trustees if a charity has more than 50 trustees and we recommend that OSCR considers whether extending this exemption to the trustees' database would be appropriate.

The proposals are likely to be challenging for Church of Scotland congregations to implement due to their unique governance arrangements. An elder of a congregation sits on the Kirk Session and is a charity trustee. This is position for life even if the elder is no longer actively involved in the governance of their parish church.

We would like to see returns pre-populated with standing information which could be updated if required. This will be especially important in relation to the comprehensive information to be included about trustees.

Question 12

Do you agree that the Scottish Charity Regulator should publish charity trustee names on the Scottish Charity Register? Please explain why.

Answer 12

Yes

No

We would not object to the trustee database being published as publication would enhance transparency. However, we do not see this as a priority for OSCR and we would prefer to see OSCR resources directed towards the maintenance of the triggers and reviews of annual accounts.

We support OSCR's proposals not to publish address details and some other details. Where details are made public these should not go beyond those disclosed in the annual report.

Question 13

Do you think the Scottish Charity Regulator should introduce Serious Incident Reporting? Please explain why.

Yes

No

We are not against a Serious Incident Reporting regime in principle but we are not convinced that such a regime would work without the introduction of criminal sanctions, which in themselves would be controversial.

It is not clear from the consultation where responsibility would lie for reporting a serious incident. Would this be a duty placed on trustees or would this duty be extended to senior staff where a charity has paid employees?

Before a regime is introduced, OSCR needs to consider the practical problems that charities working overseas particularly in war zones would face in reporting serious incidents. Some of the matters to be reported on, which are set out on page 17 on the consultation paper, would not be exceptional occurrences to such charities.

Some members of the Charities Committee have experience on the notifiable events regime for registered social landlords and the process itself is more difficult for RSLs to manage than the events themselves. We would not wish to see charities in the same position.

Question 14

Are there any further serious incidents that should be included in the list outlined?

Answer 14

We have not answered this question as we do not support the introduction of a serious incident reporting regime as outlined in the consultation paper.

However, if such a regime is to be introduced we recommend that OSCR reviews, in tandem, its guidance to independent examiners and auditors on the right and duty to report to ensure that it dovetails with the Serious Incident Reporting regime.

Respondent Information Form

Please help us to analyse the responses to our consultation by completing this form.

Name	<input type="text" value="Christine Scott, ICAS"/>
Address	<input type="text" value="CA House, 21 Haymarket Yards, Edinburgh. EH21 5BH"/>
Charity number (if responding on behalf of a charity)	<input type="text" value="N/A"/>

Choose **one** of the categories which best describes you or the organisation you represent.

Are you responding:

- As an individual?
- On behalf of a charity?
- On behalf of a law practice or firm of solicitors?
- On behalf of an accountancy firm or practice?
- Other, please specify - Professional accountancy body

Do you agree to your response being made available to the public?

- Yes - please answer A below
- No, not at all - your response will be treated as **confidential**

A. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick only one of the boxes):

- Yes, make my response, name and address all available
- Yes, make my response available, but not my name or address
- Yes, make my response and name available, but not my address