

## Response ID ANON-3Q7W-1U65-3

Submitted to Charities Bill - Detailed consultation  
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### About you

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3 What is your name?

Name:  
Charity Law & Policy Unit (CLPU) - School of Law and Social Justice, University of Liverpool

4 What is your email address?

Email:  
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5 Are you responding as an individual or on behalf of an organisation?

Organisation

### Organisation details

6 Name of organisation

Name of organisation:  
Charity Law and Policy Unit, University of Liverpool

7 Information about your organisation

Please add information about your organisation in the box below:

The Charity Law and Policy Unit, based at the University of Liverpool, is the UK's leading authority on legal and policy change relating to charities; it is the only academic Unit of its kind in the common law world with over 25 years of leading research projects and output. It carries out research into the legal issues facing charities and third sector organisations, often with a strong empirical element and leading to proposals for legal and regulatory reform, which have made important contributions to policy change in this field.

### Engagement, timing and impact assessments

8 What are your views on the Scottish Government's consultation and engagement process leading to the Bill?

Please provide your response in the box provided.:

From our perspective as a University based in the north west of England we have been able to access both the initial 2019 consultation document, to which we have separately responded (<https://www.liverpool.ac.uk/media/livacuk/law/2-research/clpu/Scottish,Government,Consultation,on,Scottish,Charity,Law-CLPU,response.pdf>) and the final consultation document (this response).

We note that this has been a lengthy process, no doubt partly due to the pandemic. We consider the consultation process to have been thorough.

9 How has the charity sector changed since 2005, and why is an update or strengthening of legislation needed?

Please provide your response in the box provided.:

There have been significant changes in the charity sector over the last two decades. The 2008 financial crash and the coronavirus pandemic both affected the regulation of charities. In part this led to significant changes to the regulatory regime in England and Wales with the enactment of the Charity Act 2011.

High profile cases have also impacted on the sector. Charity directors (of charitable companies) have been impacted by the decision of Falk, J in Re Kids Company [2021] EWHC 175 (Ch).

The UK Supreme Court handed down its decision in Lehtimaki and others (Respondents) v Cooper (Appellant) [2020] UKSC 33 on the fiduciary duties of charity members.

Technological advances and challenges have also affected the sector, e.g. payment technology advances such as cryptocurrencies, social media, and Decentralised Autonomous Organisations (DAOS).

10 The Government is committed to carrying out a wider review of charity law after the passage of this legislation. What are your views on a review?

Please provide your response in the box provided.:

A comprehensive review of charity law would be beneficial to Scotland and its charitable sector. There is the potential to become a leading jurisdiction in the charity field. The regulator has been ahead of the game, for example with the concept of public disbenefit of charities. There is further scope for other leading initiatives. For example, the Scottish charity regime could introduce novel approaches to technology, fundraising, insolvent charities, and make clear the advantages of charities in campaigning for their beneficiaries, who are often the most vulnerable in society.

Even if the intention here is merely to keep in line with other UK jurisdictions this Bill will not achieve that due to further advances over the period of the consultation, e.g. the Charities Act 2022 (England and Wales).

11 What are your views on the Bill's Financial Memorandum and the various impact assessments published by the Scottish Government?

Please provide your response in the box provided.:

No views.

## About the Bill (page 1 of 2)

12 Will the Bill lead to the Scottish public being better protected, and will charity regulation become more transparent?

Please provide your response in the box provided.:

Yes. The mooted changes on trustees will lead to greater transparency and bring the regulator in line with comparable regulators around the world. Accountability of charities to the public and the regulator is an incredibly important quality.

The provisions in the Bill will support OSCR's regulatory functions and their desire to enhance public trust and confidence in the sector.

Ultimately, the success of the Bill in protecting the Scottish public will depend on OSCR being adequately resourced to support these new regulatory changes.

13 What are your views on the extent to which the Bill matches OSCR's original proposals, as set out in 2018?

Please provide your response in the box provided.:

The initial consultation proposals offered the potential for broader reform. In the first consultation for example there were provisions around clarification around the legislation to make clear that OSCR can approve re-organisation schemes for certain charities that have been established by Royal charter, warrant or enactment. These proposals do not appear in the Bill.

In sum the proposals within the Bill are modest by reference to what could have been done at this point.

14 Do you think the Bill makes it easier or more difficult to start and run a charity?

Please provide your response in the box provided.:

The requirement to provide additional information at the inception of the charity will inevitably lead to greater burdens. In our view these are proportionate since they will give rise to a more transparent framework enhancing trust and confidence in the sector.

The additional powers for OSCR will help charities that are in difficulty, e.g. the appointment of an Interim Trustee.

The merger provisions will also be helpful to enable charities to make the best use of resources.

Greater transparency also leads to broader sector compliance due to the publication of accounts and other information.

On the Scottish connection point – overseas entities may well find it harder to set themselves up as a charity in Scotland. This may or may not be beneficial.

Closer synergies with the English and Welsh charity regime may help genuine cross-jurisdictional activity. This may make compliance less confusing for trustees who have multiple roles across both jurisdictions.

## About the Bill (page 2 of 2)

15 Will additional administrative burden be placed on charities? Would this be disproportionate for smaller charities?

Please provide your response in the box provided.:

The requirement to provide additional information at the inception of the charity will inevitably lead to greater burdens. In our view these are proportionate since they will give rise to a more transparent framework enhancing trust and confidence in the sector.

In our experience and depending on the definition of small charities it should be noted that some smaller charities are the type of charity that are most

often used as a vehicle for unfit behaviour. For example, smaller charities have been used as vehicles to divert charity money to the trustees to then use in their private capacity, i.e. not for charitable purposes. Taking excessive remuneration is an example of this type of behaviour. Care must be taken with any reform which enables this type of behaviour. Maintaining adequate disclosure requirements, even for small charities, is good.

16 Does the Bill bring the Scottish regulatory system into line with other parts of the UK? Why is this important?

Please provide your response in the box provided.:

It does to a greater extent but not entirely. The more in line it can be the better. Synergy is important for trustees and beneficiaries in terms of understanding of the law.

It would be a negative to be the least transparent jurisdiction in a geographic area sharing a currency as this would lead to vulnerability to exploitation by potential bad actors. Equally, a reputation as a place where a sham charity could more easily operate could lead to legitimate charities staying away due to reputational concerns.

The health and vibrancy of the charitable sector in Scotland requires strong regulation, accountability and transparency.

17 Do you have any other comments or concerns about specific sections of the Bill, or about the Bill more generally?

Please provide your response in the box provided.:

An important and valuable change for small unincorporated charities in Scotland that is missing from the Bill would be the ability to more easily convert to an SCIO.

There are a number of measures that will create additional burdens for OSCR. OSCR must be properly funded to undertake this regulatory activity.

OSCR must also be properly resourced to ensure their computer systems and new databases are secure from external threats.

In line with the values of a diverse sector that reflects the broader demographics of society we would propose that it might be appropriate for OSCR to collect additional demographic data about charity trustees, which could in a suitably anonymised fashion, be used in future research. This could assist with the aim of diversifying trustee boards.

We are satisfied that the connection to Scotland test is appropriately vested in OSCR's decision making, however, we note that this does create a degree of uncertainty for charities seeking to operate in Scotland. We would welcome prompt and comprehensive regulatory guidance from OSCR on this point.