

FMO/IMS

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Institute Members in Scotland

Ms Myra Watson
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Dear Ms Watson

DRAFT CHARITIES AND TRUSTEES INVESTMENT (SCOTLAND) BILL

On behalf of the Institute Members in Scotland (IMS) Group of the Institute of Chartered Accountants in England and Wales (ICAEW), I am pleased to set out below comments on the above consultation paper.

The ICAEW-IMS is supportive of the principle of setting out a comprehensive, consistent and effective regulatory system for charities in Scotland. We believe this Bill has much to commend it but there are areas where we would like further clarification. Much of the important detail is being left to the detailed regulations; we look forward to commenting on these when they are released.

Definition of a charity

We believe there should be as much congruence as possible between Scotland and the rest of the UK, and with the Inland Revenue, as to the definition of a charity.

We also believe that the Bill should not lay down prescriptive criteria, and we support the idea that the Office of the Scottish Charities Regulator (“OSCR”) should be able to interpret earlier decisions and draw appropriate conclusions for the future.

However, we would like OSCR, in consultation with the charities sector, to produce general guidelines to enable prospective charities to determine whether or not they are likely to be recognised.

The Charities Regulator

We welcome the establishment of OSCR as the Charities Regulator in Scotland.

We believe it is essential that the regulator is independent of Ministers and reports directly to Parliament. Such independence we suggest should also be reflected in the

way OSCR's budget is awarded. Additionally, we believe the governing board of OSCR should be made up of non-political appointees and include representatives with direct and relevant experience of different charitable sectors, with at least one appointee with professional accounting expertise. However we recognise that OSCR should also be free of undue influence by the charities sector.

We believe OSCR's key role should be as a regulator, with less emphasis on providing advice. There are already sufficient bodies in Scotland (such as SCVO and the SCFDG) which provide excellent information and advice services. However, we suggest OSCR should have a role in ensuring that charities and their trustees are more fully aware of their responsibilities and obligations.

Charity Governance

We understand the concerns that exist about the term 'trustee' and 'Charity Trustee'. However, we feel that to introduce a new term 'Charity Steward' would cause more confusion among the public, especially as the term Charity Trustee will continue to be used in England and Wales. We therefore would prefer to continue to use the term 'Charity Trustee' in Scotland.

We support the duties of trustees outlined in the Bill and believe OSCR should be a driver in encouraging wider understanding of the roles and responsibilities of trustees, particularly those of smaller charities.

Powers to deal with wrong-doing

We are concerned that the Bill currently gives no powers to OSCR to maintain a register of trustees. We recognise there are difficulties with such a register (cost, sensitivity of information). However, the existence of such a register would provide a basis for pro-active monitoring by OSCR. Further debate on this issue is essential.

Operating Environment

We support the idea of creating a new incorporated entity for charities who would then have only to report to OSCR rather than to the charity regulator and Companies House. However, the benefit of limited liability has always been linked to the duty to provide certain information to the public domain (details of directors, registered office, accounting information etc).

Charity accounts have always been available to the public on request in principle; in practice this only applies if a contact address for the charity is known. We would like to see further discussion of a requirement for charities to file a formal 'registered office with OSCR along with notification of changes in key office holders etc.

The Bill requires charities to lodge accounts with OSCR but there is currently no mention of deadlines for such filing or potential penalties if such deadlines are missed. We believe these are essential if OSCR is to be able to fulfil its monitoring role adequately.

We should like these issues to be taken into consideration when drawing up the detailed regulations.

We appreciate that much of the detail regarding accounting requirements will be included in the regulations; we hope that these will be congruent with the Statement of Recommended Practice on Accounting and Reporting by Charities (Revised 2000) that is currently under review.

We believe the operating and reporting requirements should be drawn up to reflect the diverse range of organisations which fall under the heading of 'charities'. These range from organisations with multi million pound income which collect directly from the public, to small local charities providing a service only to their members whose only reason for registering as a charity is to obtain small grant funding. There is less risk that such small 'not for profit' would damage public confidence in the sector or misuse public money (providing grants are small). We would therefore expect their overall operating environment to be significantly less onerous.

We also hope that the regulations will provide sufficient guidance for independent reviewers to ensure that they have an appropriate framework in which to operate. Consideration should be given as to whether, like an auditor, an independent reviewer has an obligation to obtain 'professional clearance' from the previous reviewer, either directly or indirectly.

ICAEW Members in Scotland

In 2001, the ICAEW established the Institute Members in Scotland (IMS) Group to conduct the normal functions of participation and representation of its members available to ICAEW members elsewhere in the UK and Northern Ireland. The Group represents over 1,200 Chartered Accountants; 75% work in Scottish business organisations including financial services, oil, media, the charitable and the public sectors. The IMS Group can draw on the extensive resources of the ICAEW, a professional body with more than 125,000 members worldwide.

The IMS Group welcomes circulation of Scottish Executive consultations to allow our members to contribute to policy thinking. We hope that the comments on this draft Bill are helpful and we would be pleased to assist with any further development of this agenda, in particular commenting on the detailed regulations.

Yours sincerely

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