

## REPORT

To: GENERAL PURPOSES COMMITTEE		Subject: DRAFT CHARITIES AND TRUSTEE INVESTMENTS (SCOTLAND) BILL	
From: DIRECTOR OF ADMINISTRATION			
Date: 3 August 2004	Ref: WBK/KH		

**1. PURPOSE OF REPORT**

- 1.1. To advise the Committee of a Scottish Executive Consultation on the draft Charities and Trustee Investments (Scotland) Bill.

**2. BACKGROUND**

- 2.1. Scottish Charity Law has traditionally been somewhat piecemeal. The Scottish Executive has now published the draft Charities and Trustee Investment (Scotland) Bill in order to update and consolidate charity law and is consulting with a range of interested parties, including local authorities, on the draft Bill.
- 2.2. It is considered that the draft Bill will provide modern and effective regulation of charity law, which will improve public confidence in the system whilst making the administration of charity regulation simpler for both charities and regulators.
- 2.3. From a local authority point of view, of particular interest is the area of public charitable collections. Public charitable collections, which are to be re-named "public benevolent collections" are licensed by local authorities which allows local control, to an extent, over how, where and when charity collections take place. That regulation has been traditionally enshrined in the Civic Government (Scotland) Act 1982 and corresponding regulations all of which require modernisation. For example, the traditional regulations do not provide for the regulation of direct debit/standing order street campaigns by charities whereas the new Bill specifically provides for those. Equally, there has long been a debate on whether collections taking place within for example, shop premises are within the ambit of public charitable collections. There is now to be a far clearer definition of what constitutes a public benevolent collection.

**3. ISSUES FOR CONSIDERATION**

- 3.1. The Scottish Executive has consulted over the summer period and a response to the Consultation has been prepared and issued, in consultation with the Convener of the Committee. Unfortunately, the time limit for consultation did not allow the full response to be placed before the Committee before it was sent but the Committee will be in a position to consider homologation. The response is annexed to this report. In addition, the Council has provided a copy of the response to COSLA in order to contribute to the continuing work that COSLA is doing in this area.

**4. CORPORATE CONSIDERATIONS**

- 4.1. The issues contained in this Report do not significantly impact on the Council's wider policies and positions.

5. **RECOMMENDATION**

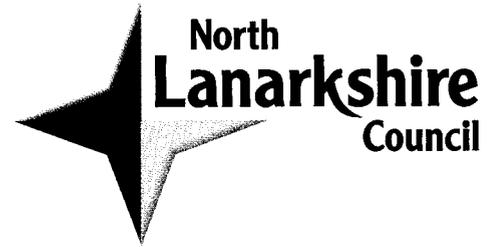
The Committee is asked to homologate the Council response to the Scottish Executive on the draft Charities and Trustee Investments (Scotland) Bill.

*Walter B. Kilgus*

*W* Director of Administration

*Members seeking further information on the contents of this report are asked to contact Kenny Hannaway, Senior Solicitor (Licensing) on Extension 2214.*

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DRAFT

Dear Madam

**Consultation on Draft Charities and Trustee Investments (Scotland) Bill**

I refer to your Consultation on the Draft Charities and Trustee Investments (Scotland) Bill and would like to offer my comments on behalf of North Lanarkshire Council as follows.

North Lanarkshire Council agrees that charities play a vital role in daily life in Scotland and make an extremely valuable contribution to Scottish society.

The Council welcomes the production of a modern consolidated Charity Law Bill for Scotland. It agrees that the reform of charity law should provide a robust, effective and proportionate regulatory system for Scottish charities. Such a system is crucial to public confidence. It is also, of course, necessary to provide a system that makes the proper operation of charities as straightforward as possible for those working in the sector.

The Council is in agreement with the five key guiding principles for charity regulation namely independence, proportionality, accountability, transparency and consistency.

The Council agrees with the new definition of charities and charitable purposes and considers that those definitions provide a sufficient degree of flexibility to encompass all sorts of charitable organisations whilst ensuring that charitable status, and the right to claim such, is conferred only on truly benevolent organisations including those making contributions to the community insofar as the advancement of various disciplines including health, religion, education and the environment are concerned.

The creation of a single charities regulator is long overdue. It has always been an unsatisfactory situation that charity status seemed only to arise from recognition by the Inland Revenue for tax purposes. Apart from that, those wishing to obtain information about charities have been left casting around local authorities, voluntary associations of charitable organisations and the like. The Office of the Scottish Charity Regulator (OSCR) will be the principal port of call for those having an interest or concern in the area of charities.

Equally, one of the simplest, yet most effective improvements is the publicly accessible register of all bodies eligible to operate as charities in Scotland. The provision of that register, especially in live online form, will be of assistance to any number of agencies and will of course provide a definite answer to the question of charitable status for the public which will significantly enhance public confidence in any given organisation.



It seems that much thought has gone into the form that the regulator should take and the manner and degree of accountability imposed on the regulator and the Council welcomes the suggested way forward, namely that the regulator be a non-ministerial department accountable to Parliament and not subject to the direction or control of Scottish Ministers. That, coupled with various procedures for laying annual reports and accounts before the Parliament will ensure proper scrutiny of the regulator's activities. The Council agrees that the term "charity trustee" to describe volunteer managers/board members of charities would be unhelpful given the potential for a conflict with the use of the title "trustee" in trust law. The term "charity steward" seems a reasonable alternative.

The Council totally agrees that charity stewards should be under a duty to always act in the best interests of the charity and ensure that it follows its charitable purposes. The independence and protection of charity stewards from external direction and influence is most important and the Council agrees that codifying their duties will provide the requisite clarity about their responsibilities. Equally the Council agrees that it is important to ensure that certain persons should be disqualified from being charity stewards and the various categories suggested, such as those persons who have been convicted of offences involving dishonesty, seem reasonable.

The Council agrees that the measures proposed in the bill give OSCR significant and appropriate powers to deal with wrongdoing in charities.

Of particular interest to local authorities is the subject of public charitable collections. The continuation of the existing system of local authority licensing of public benevolent collections (as they are now to be called) is welcomed. At the end of the day the public expect that such activities will have some measure of local control and generally expect that the local authority will have some involvement in that.

There has recently been the grey area of whether direct debit/standing order instructions sought and signed in the street constitute a public benevolent collection. The Council welcomes the specific inclusion of such campaigns in the definition of public benevolent collections. An important aspect of this form of regulation is ensuring that there is not an over-abundance of collectors in any given area at any given time, for various reasons, and the fact that deferment of payment, by way of standing order, escaped regulation was not helpful.

Again, clarity in the concept of "public place" will be helpful as there has been much debate on whether collections in supermarket car parks or foyers constitute public benevolent collections. At the end of the day, I would again reiterate that the public expects some form of local control over these forms of collection and I agree that "public place" should include any place to which the public have unrestricted access when it is open.

I have no experience of door to door collections of goods by charities causing any particular problems in the North Lanarkshire area and to that end I agree that there is little need to regulate those.

I have been involved in the discussions on time limits and procedures for applications and agree with the proposals in that regard.

The Council welcomes OSCR's role in working with local authorities and police forces to provide advice and guidance and that will indeed ensure that the Bill is better understood and better used by all parties.

The Council agrees with the slight changes to the rules involving "exempt promoters" (now to be called "designated national collectors") and considers it fair that they are not allowed to "block book" dates in charity collection diaries for years in advance thereby undermining the ability of local charities to effectively collect also.

I trust that these comments are of assistance to you.

Yours faithfully

**Head of Legal Services**