

NORTH LANARKSHIRE COUNCIL

REPORT

To: CORPORATE SERVICES COMMITTEE		Subject: CHARITY LAW CONSULTATION: PROPOSALS FOR MINOR AMENDMENTS TO THE CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005 AND TO THE CHARITIES ACCOUNTS (SCOTLAND) REGULATIONS 2006
From: HEAD OF LEGAL SERVICES		
Date: 5 AUGUST 2009	Ref: AET/JM	

1. PURPOSE OF REPORT

- 1.1. The purpose of this report is to seek homologation by Committee of a response made on behalf of the Council to the Scottish Government Consultation Paper on Proposals for Minor Amendments to the Charities and Trustee Investment (Scotland) Act 2005 and to the Charities Accounts (Scotland) Regulations 2006.
- 1.2. A copy of the Paper is in the Members' Library and further details are available at:-
<http://www.scotland.gov.uk/Publications/2009/04/24092805/0>
- 1.3. The closing date for responses to the Paper was 24 July 2009.

2. BACKGROUND

The Consultation Paper seeks views on various proposed minor amendments to charity legislation. Most of these proposals are of a technical or housekeeping nature, but some have a more significant impact on determining which accounting rules and exemptions should apply to individual charities. A common theme of the Consultation Paper is the need to reduce the regulatory burden on the smallest charities without compromising public confidence in the sector.

3. PROPOSALS

Firstly, the Consultation Paper puts forward proposals for minor amendments to the Charities and Trustee Investment (Scotland) Act 2005 in response to recommendations made by the Office of the Scottish Charity Regulator (OSCR) in the 2008 Annual Report and Accounts. These recommendations were made in light of OSCR's experience of the 2005 Act in practice. The proposals are designed to give OSCR the power to assist charities in certain situations not foreseen in the Act, or to increase the transparency of the regulatory framework.

Secondly, the Consultation Paper makes proposals for amendments to the Accounts Regulations. These are largely technical changes to update existing Regulations and to remove uncertainty over their affect. However, views were also sought on more significant changes to reporting requirements and thresholds.

The Consultation Paper also discusses amendments to the Accounts Regulations that the Scottish Government is not minded to take forward at this stage.

4. **SUMMARY OF THE RESPONSE TO THE CONSULTATION PAPER**

Overall, the Council is in favour of the proposals put forward by the Scottish Government. The proposals are not thought to be controversial and would seem sensible changes to make. However, several of the proposals are so minor that they would have little or no impact on Council matters. Therefore, responses have only been made to those proposals which are deemed to be the most relevant to the Council.

5. **CORPORATE CONSIDERATIONS**

There are no corporate considerations arising from this report.

6. **RECOMMENDATIONS**

The Committee is asked to homologate the response made, as detailed in Appendix 1 to this report.



Head of Legal Services

For further information on this report please contact Harvey Baird on telephone 01698 302378.

APPENDIX 1

NORTH LANARKSHIRE COUNCIL RESPONSE TO CHARITY LAW CONSULTATION: PROPOSALS FOR MINOR AMENDMENTS TO THE CHARITIES AND TRUSTEES INVESTMENT (SCOTLAND) ACT 2005 AND TO THE CHARITIES ACCOUNTS (SCOTLAND) REGULATIONS 2006

GENERAL COMMENTS

The majority of the accounting recommendations are so minor that they would have little or no impact on the Council's charities. Therefore, comments are set out below only in response to those questions which are deemed to be most relevant to the Council.

- Q1 Do you agree that allowing OSCR to appoint additional trustees, to approve changes when charities wish to add new unrelated provisions to their constitution, and to reorganise restricted funds will enable OSCR to assist charities without unintended consequences?**
- A1** Yes, it is agreed that allowing OSCR to appoint additional trustees would benefit charities, for example, where the original charitable purpose no longer exists, and also in the reorganisation of funds.
- Q3 Do you agree that requiring charities to state their name, charitable status and charity number on their websites will increase transparency? Can this be done without imposing significant costs on charities?**
- A3** Yes, it is agreed that requiring charities to state their name, charitable status and charity number on their websites will increase transparency. This measure would make it easier for third parties dealing with a charity to find out information about the charity's status. It is believed that the benefit of this measure would outweigh the cost (which is it assumed would not be significant).
- Q5 Do you agree that that replacing "accounts collated into a single document" with "a single set of accounts" would allow connected charities greater freedom to meet the requirements of the regulations in the most convenient fashion?**
- A5** Yes, it is agreed that that replacing "accounts collated into a single document" with "a single set of accounts" would allow connected charities greater freedom to meet the requirements of the regulations in the most convenient fashion. This measure will help to remove the scope for confusion and make this requirement easier for charities to understand and comply with.
- Q6 Do you agree that including a specific requirement for consolidated accounts to be audited will bring greater clarity?**
- A6** Yes, it is agreed that including a specific requirement for consolidated accounts to be audited will bring greater clarity.

- Q7** Do you agree that clarifying the asset threshold relates to the assets at the end of the financial year will make the definition of the asset threshold easier to understand and assess?
- A7** Yes, it is agreed that clarifying the asset threshold relates to the assets at the end of the financial year will make the definition of the asset threshold easier to understand and assess.
- Q8** Do you agree that the proposed amendments set out in part 1B above are both helpful in either clarifying or updating the existing regulations? Do you agree that they will have only limited real world effect?
- A8** Yes, it is agreed that the proposed amendments set out in part 1B above are both helpful in either clarifying or updating the existing regulations. Yes, it is agreed that they will have only limited real world effect.
- Q10** Do you agree introducing a requirement for reporting on public benefit increases transparency without placing a significant additional burden on charities?
- A10** Yes, it is agreed that introducing a requirement for reporting on public benefit increases transparency without placing a significant additional burden on charities.
- Q11** Should the accounting thresholds be increased? If so, should they be increased to match the proposed thresholds in England and Wales?
- A11** Yes, accounting thresholds should be reviewed and increased regularly. It is agreed that in 2005 it would have been inappropriate to set the threshold for fully accrued accounts at £250,000. However, another review would be welcomed, particularly if the definition of 'income' is to change. Increasing the thresholds to match England and Wales will have no direct impact on the Council; therefore there are no comments on this proposal.
- Q12** Do you consider there is a case for a less burdensome treatment for charities who breach the accounting threshold for one year only?
- A12** Yes, it is considered there is a case for a less burdensome treatment for charities who breach the accounting threshold for one year only.
- Q13** Are there any advantages to reducing the formal requirements on charities with no income, expenditure or assets from the accounting regulations? Is it right to do so?
- A13** Yes there are advantages to reducing the formal requirements on charities with no income, expenditure or assets from the accounting regulations. Adhering to the accounting regulations can be time consuming and costly – if the charity has had no activity within a year then removing the burden of preparing accounting statements would be welcomed.

Q15 What would the impact on public confidence in the charity sector be of any potential changes?

A15 The simpler Receipts and Payments accounts are sufficient to provide the necessary degree of public transparency and accountability for charities with lower incomes.

Q17 Do you agree with our conclusion that the issues covered in Part 3 should not be addressed in the 2009 Amendment Regulations?

A17 Yes, it is agreed that the issues covered in Part 3 should not be addressed in the 2009 Amendment Regulations.

Q18 Do you agree that it is not appropriate for the Annual Report to be subject to audit/independent examination beyond assessment of its consistency with the financial statements? Is legislative change needed to address any real world issues caused by the existing regulations?

A18 Yes, it is agreed that it is not appropriate for the Annual Report to be subject to audit/independent examination beyond assessment of its consistency with the financial statements. The Council is not aware of any legislative change needed to address any real world issues caused by the existing regulations.

Head of Legal Services