

**Consultation on Scottish Charity Law**

**Response from Social Enterprise Scotland**

***Social enterprises and charity law***

Social Enterprise Scotland welcomes the opportunity to respond to this consultation.

We believe that it’s timely to review the current operating environment for charities in Scotland since the introduction of the Charities and Trustee Investment (Scotland) Act in 2005.

A positive, enabling approach to regulation is essential to ensure continued confidence in charities across Scotland and build on strong public trust.

The social enterprise community in Scotland includes a wide range of business and legal models. This includes Community Interest Companies (CICs), social firms, housing associations, co-operatives, credit unions, development trusts, registered charities / SCIOs and others.

According to the most recent statistics, from *Social Enterprise in Scotland: Census 2017*:

* *75% of Scottish social enterprises are also registered charities.*
* *This means that almost 1/5 charities in Scotland are also undertaking enterprise activity.*
* *Social enterprises tend to be larger in size compared to the population of charities in Scotland.*
* *11% of all Scottish social enterprises are SCIOs (Scottish Charitable Incorporated Organisations)*

While Social Enterprise Scotland is pleased to respond to this new consultation we also believe that there should be a wider review of charity law and regulation. The specific questions within the consultation are narrow in scope.

There are a number of additional issues that are not covered by this consultation and we would encourage discussion about these going forward.

***Additional opportunities for reform***

There is much overlap between the different business and legal models within the social economy, for example, registered charities and Community Interest Companies (CICs).

Both of these models are required by statute to have a clear social or charitable purpose at their foundation. However, CICs report to the UK CIC Regulator based in Companies House.

*There may therefore be merit in the devolution of CIC regulation to Scotland and for CICs to therefore be subject only to OSCR reporting requirements.*

Some reform has already taken place. For example, Scottish trading charities can now choose the SCIO model, reducing the need to report to both OSCR and the UK Companies House.

Secondly merger or closer alignment with other regulators of social enterprises, such as the Scottish Housing Regulator for Housing Associations, could be considered.

RSLs are often required to report to multiple regulators e.g. OSCR, the SHR and the UK Financial Conduct Authority (for Co-operative and Community Benefit Societies).

*Consideration may also be given to the regulation of co-operatives and Community Benefit Societies being devolved to Scotland.*

This would have the effect of reducing regulatory duplication *and allow all types of social economy organisations to develop and grow together in a coherent and integrated way.*

*This would go a long way to achieving The Scottish Government aim of building inclusive growth and an economy that benefits everyone.*

While diversity of business models is welcome, this complex map, with multiple regulators, can create confusion for the public when seeking to identify legitimate social economy organisations.

Finally while OSCR is primarily a regulator it could also improve information on options for charities or potential charities.

Specifically improved information on the benefits of SCIO status and trading or the option of a CIC model and other alternatives to a traditional charity structure.

***Full consultation response***

Our full response to the individual consultation questions has been submitted via The Scottish Government online portal.

Our approach to these specific questions is focused on broadly supporting the proposed practical, constructive changes, with certain exceptions.

*Regulatory reform should not only benefit the charity sector but crucially the wider public interest.*

However, reforms such as retention of trustee data by the regulator should be monitored and proportionate.

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