

**Northern Ireland Assembly Communities Committee
Meeting 16 September 2021**

**Office of the Scottish Charity Regulator
Submission regarding the Charities Bill**

1. The Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) as a Non-Ministerial Office and part of the Scottish Administration. We are independent of Scottish Government and report directly to the Scottish Parliament.
2. We are the independent regulator and registrar for around 25,000 Scottish charities including community groups, religious charities, schools, universities, grant-giving charities and major care providers. We have a universal register and over 50% of the charities on the register have an income of less than £25,000. The nature of our registered community informs the way in which we approach our regulation.

Delegation of decision-making powers to staff

3. We note the general intention of Section 2 of the Charities Bill to allow the Charity Commission for Northern Ireland to delegate decision making to Commission staff, subject to certain exceptions. It may be helpful to set out the position in Scotland. Schedule 1, article 6 of the 2005 Act expressly grants the power to authorised employees of OSCR to carry out any function on behalf of the regulator. No specific exceptions are provided for.
4. The delegation of functions by OSCR's board is covered by a Schedule of Delegation. Under this, almost all regulatory decision-making is carried out by employees. The schedule of delegation provides for the Board to retain decision making in novel or contentious cases, and this has been done in a small number of cases (two in 2020/1), and those have involved a panel of board members undertaking the statutory internal review (under section 71 of the 2005 Act) of first instance decisions taken by staff members.
5. It is important to stress that the schedule of delegation also retains for the Board decision-making on significant corporate policies, including policies and guidance affecting regulatory decision-making, so retaining control of the policy framework for individual decisions.

6. OSCR's Board has a Casework Committee which provides oversight and assurance to the Board concerning case-based activity. That includes identifying individual cases where OSCR Board involvement in decision-making is necessary in furtherance of the Scheme of Delegation.

Exemption from registration by reference to thresholds

7. We also note the provision to make regulations exempting charities from registering by reference to thresholds. We are not in a position to comment on the desirability of these provisions in the Northern Ireland context, but it may be helpful to set out the situation in Scotland. Under section 106 of the 2005 Act a 'charity' is defined as a body entered in the Scottish Charity Register. Section 31 of the Act gives OSCR powers to act against bodies holding themselves out to be charities when not so registered.
8. The basis of charity regulation in Scotland is therefore universal registration. This was a clear policy principle set out during the passage of the 2005 Act through the Scottish Parliament.
9. However, the 2005 Act does also embody the principle that smaller charities in Scotland should be subject to less weighty reporting and accounting requirements, and regulations made under the Act set out thresholds for this. This reflects the structure of the sector in Scotland, where the majority of charities are small and volunteer-run. So, a charity only has to prepare fully accrued accounts if one of the following applies:
 - the charity's gross income in the financial year is £250,000 or more
 - the charity is also a registered company
 - the charity's governing document says it should prepare accrued accounts
 - any third party, for example a funder, has asked for accrued accountsCharities which do not fall within these categories are able to prepare and submit simpler accounts prepared on a receipts and payments basis.
10. We also take a graduated approach to the annual return we require charities to complete online when submitting their accounts to OSCR, so that charities with lower income levels are required to complete only a shorter return.
11. The Scottish Government consulted earlier this year on a number of possible changes to charity law (<https://consult.gov.scot/local-government-and-communities/strengthening-scottish-charity-law/>). However, none of these relate to the basic principle of universal registration.

On behalf of OSCR