

Charity Reorganisations, draft guidance for consultation (OSCR)

Response of the Scottish Council of Jewish Communities

There are many small charities that operate in or for the benefit of the Scottish Jewish community, or for particular groups within that community. They do much valuable work and rely very heavily on the goodwill of members of the community both to provide services and also to administer their organisations. Many of the trustees do not have the time or facilities to monitor the OSCR website, so they are heavily reliant on information sent to them by OSCR in order to comply with OSCR's regulations, or even to know what information and Guidance is available.

We are concerned that such organisations should be supported to continue to provide the best service possible to their beneficiaries. This will not be the case if procedures and associated guidance are so complex as to make it likely that mistakes will be made, or so time-consuming as to make it even more difficult than it currently is to find people willing to be a trustee. It would also be regrettable if regulation made it necessary, or even merely prudent, for trustees to employ expensive professional (legal or financial) advice to ensure compliance, thereby diverting their limited funds from the primary purpose of the charity.

Question 1: Do you agree with OSCR's approach of considering applications, where possible, under the least onerous process? Can you envisage any circumstances in which this would not be desirable?

In order to place the least possible burden on trustees, all applications to reorganise should be dealt with "*under the process which places the least administrative and regulatory burden on the charity*" consistent with the requirements of the Charity and Trustee Investment (Scotland) Act 2005. Where possible, this should be by means of the Consents and Notifications procedure.

However, we are concerned that many trustees may not realise that they do not have to use the more complex and onerous "Reorganisation" procedure in order to reorganise (in lay terms) the charity whose work they oversee. As a result they may undertake unnecessary and onerous work that delays potentially beneficial changes to the charity's organisational structure. This could be largely avoided if the title of OSCR guidance documents reflected the scope of the procedure concerned. "Consents and Notifications" should, therefore, be renamed to indicate that it is the first port of call for most charity reorganisations. It should not, as suggested in the consultation document, be necessary for OSCR to advise applicants to use the Consents and Notifications procedure after they have already submitted an application under the 2007 Regulations.

Question 2: Do you agree with OSCR's pragmatic approach in relation to applications for reorganisation that are not by or on behalf of formally recognised charity trustees? Can you suggest ways in which this can be further clarified?

We do agree with the proposed pragmatic approach, and suggest that the guidance documents to both "Consents and Notifications" and "Charity Reorganisations" (renamed, so that the scope of each procedure can be readily understood) should include a clear statement to this effect.

Question 3: Under what circumstances should OSCR consider extending the minimum 28 days publication period?

Rather than compiling a list of circumstances in which the publication period should be extended, OSCR should show flexibility and respond to circumstances as they arise. For example, it may be appropriate to extend the notice period if it includes two public holidays, or if OSCR's website is down for more than a few hours. In addition, the charity's own circumstances and constituency may suggest that the notice period should be extended; for example, if the notice period for a Jewish charity were to include any major Jewish festivals, as potential objectors are not likely to check the website regularly during this time.

Since it is not the purpose of the regulations to obstruct to change, but merely to ensure changes are properly notified, a clear statement that OSCR will extend notice periods in all reasonable circumstances would be welcome.

Question 4: Do you agree with OSCR's approach to refuse approval if the statutory publication requirement has not been met?

We do not see that OSCR could do otherwise, given that publication is required by statute. However, a minor, non-substantive failure to meet the requirement should not result in a refusal if the statutory requirement has been substantially met, for example, if a previously notified meeting takes place one day short of a time limit, or if a published notice contains an immaterial typographical error.

Question 5: When should OSCR consider a newspaper to be one 'circulating throughout Scotland'? Should OSCR produce a list of newspapers it considers acceptable for publication of the statutory notice?

In order to be considered as 'circulating throughout Scotland' a newspaper must not only be easily obtainable anywhere in the country, but must also have a large circulation on each day on which it is published. However, it may sometimes be more appropriate for a notice to be placed in a local newspaper, so there should be a measure of flexibility. For example, more of the relevant constituency will probably see a notice about a large charity operating only in the Aberdeen area if it is placed in the *Press and Journal* than in the *Herald*.

OSCR should compile a list of acceptable newspapers, so that a charity does not inadvertently select one that does not meet the required standard and thereby have its application for reorganisation refused.

We are concerned that notices relating to charities with an annual income of under £250,000 will only be published on the OSCR website. Internet access is by no means universal, particularly among members of certain groups, so web-only publication may not inform the relevant constituency of any impending change. (We understand that OSCR's own figures, derived from annual returns, show that only around 56% of charities have access to e-mail.) Notices should, therefore, be published in places that are accessible to members of the relevant constituency as well as on the web.

Question 6: Do you believe that OSCR should take a proportionate approach to refusing applications on the grounds of an unsatisfactory notice having been published? If so, what would you consider to be failures in the notice not warranting refusal of approval of the proposed scheme?

Where the non-compliance is not material this should not provide grounds for OSCR to refuse approval. Approval should only be refused when the notice fails to provide the requisite substantive information.

Question 7: Do you agree with OSCR's intention to send a copy of any objections received to the charity? Can you envisage any situation where this should not be done?

We agree that a charity must be fully informed about any objections, but do not agree that the name and address of the objector should be withheld. It is a matter of natural justice that the charity should know the source of an objection, and to do otherwise may even prevent OSCR from learning material facts about the case (for example, the objector may have been a former employee who was dismissed by the charity, and the objection may be nothing more than the expression of a grudge).

People with genuine objections to reorganisation must, of course, enjoy the full protection of the law from any malign act on the part of a charity resentful of the objector's intervention.

In rare cases providing a copy of an objection may impact negatively on a current criminal investigation. In such cases OSCR must consult with the police and any other relevant authority before a decision is made as to whether to delay sending a copy of the objection, or indeed, whether to send it at all. It would, in such circumstances, be appropriate for OSCR to delay making a decision as to whether or not to approve the application until the charity can be informed about the objection.

Question 8: Do you have any further comments to make on the draft guidance?

We are concerned that some recent guidance produced by OSCR does not provide charity trustees with simple and straightforward information about their obligations. We are aware of anxiety, particularly among small charitable organisations, and emphasise that all documentation must be such as to increase the probability that the correct procedures are followed, not such as to set trustees up to fail. To do otherwise can only result in the closure of some charities because of difficulty in recruiting and retaining trustees. In many cases such closure would cause substantial hardship for their erstwhile beneficiaries.

Note: The Scottish Council of Jewish Communities is the representative body of all the Jewish communities in Scotland comprising Glasgow, Edinburgh, Aberdeen and Dundee as well as the more loosely linked groups of the Jewish Network of Argyll and the Highlands, and of students studying in Scottish Universities and Colleges.

In preparing this response we have consulted widely among members of the Scottish Jewish community.

Respondent Information Form

Name

Address

Please help us to analyse the responses to our consultation by completing this form. Choose **one** of the categories which best describes you or the organisation you represent. Please answer the questions in that category and include this form with your response.

Are you responding as an individual?

Do you agree to your response being made available to the public?

Yes Please answer A below.

No, not at all Your response will be treated as **confidential**.

A. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick one of the boxes):

Yes, make my response, name and address all available.

Yes, make my response available, but not my name or address.

Yes, make my response and name available, but not my address.

Are you responding on behalf of a charity?

What is your charity number:

The name and address of your charity will be made available to the public. Are you also content for your response to be made available?

Yes

No We will treat your response as **confidential**.

Do you represent an organisation that is not a charity?

Do you represent a law practice or firm of solicitors?

Do you represent an accountancy firm or practice?

Do you represent a local authority?

Do you represent another type of organisation? If so, please describe:

The name and address of your organisation will be made available to the public. Are you also content for your response to be made available?

Yes

No We will treat your response as **confidential**.