

RESPONDENT INFORMATION FORM



Scottish Government
Riaghaltas na h-Alba
gov.scot

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No

Scottish Government's Consultation on Scottish Charity Law

Introduction

Colleges Scotland is the collective voice for the college sector in Scotland, representing its interests and ensuring that colleges are at the heart of a world class education sector that is recognised, valued and available to all. Colleges Scotland, as the membership body, represents all 26 colleges in Scotland, which deliver both further education and around 26% of the provision of all higher education in Scotland.

Colleges Scotland welcomes the review of Scottish Charity Law and the opportunity to respond to the Scottish Government's consultation on potential improvements.

Background

As well as being public bodies and audited by Audit Scotland, Scotland's colleges are also registered charities. As charities, colleges are regulated by the Office of the Scottish Charity Regulator (OSCR) where they have a legal duty to prepare and submit annual reports and accounts.

In addition, when the Scottish Government reclassified colleges as public sector bodies through the Office for National Statistics (ONS) in 2014, there were several colleges which arranged for Arm's Length Foundations (ALFs) to be established to donate reserves held by the college. Colleges can then apply for funds by making an appropriate business case, for the benefit of students. ALFs are fully independent from the college and are also registered charities which means they are also required to comply with Scottish Charity Law.

Consultation Response

Colleges Scotland has consulted with its members on the proposed changes and forms a sector response which is set out below.

Wide ranging powers

- If OSCR is granted more wide ranging powers, it would be helpful to have more clarity on these powers and under what circumstances these might be used, as well as the potential outcomes for charities. There is a risk that if these powers are not clearly defined, OSCR could become a 'catch-all' organisation when there are other bodies operating in Scotland who maybe more appropriate for carrying out these functions e.g. Police Scotland dealing with trustees committing fraud or bodies established under Royal Charter being regulated by the awarding body.

External register of charity trustees

- OSCR should only be allowed to publish the outcome of investigations or the names of trustees who have been removed, following a due processes being completed, including the right of appeal, and only as a last resort. Exception would be for those cases where there have been serious failings or evidence of criminal activity uncovered at an early stage in an investigation.

Positive directions to charities

- There is support for OSCR being given more powers to allow them to issue positive directions to charities. This would support good governance across the college sector however, further clarity is sought for those instances wherein a charity may be directed to “*manage conflict of interest effectively and demonstrably*” and wherein failure to comply would constitute “*misconduct*” and could mean that “*enforcement action would be taken against the charity or trustees as appropriate*”. It should also be worth considering whether a charity’s failure to comply would “*be classed as trustee misconduct*”. It should be made clear also that in those cases wherein a positive direction is issued in order to manage a conflict of interest effectively and demonstrably, responsibility for declaring a conflict lies with the individual charity trustees and it is they who bear the risk of enforcement action in the event of failure to comply with a positive direction, and not the charity itself.

Colleges Scotland
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