



OFFICIAL REPORT
AITHISG OIFIGEIL

Social Justice and Social Security Committee

Thursday 1 June 2023

Session 6



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SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE
14th Meeting 2023, Session 6

CONVENER

*Collette Stevenson (East Kilbride) (SNP)

DEPUTY CONVENER

*Gordon MacDonald (Edinburgh Pentlands) (SNP)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)

*Miles Briggs (Lothian) (Con)

*Katy Clark (West Scotland) (Lab)

*James Dornan (Glasgow Cathcart) (SNP)

*Marie McNair (Clydebank and Milngavie) (SNP)

*Paul O’Kane (West Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Shirley-Anne Somerville (Cabinet Secretary for Social Justice)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Social Justice and Social Security Committee

Thursday 1 June 2023

[The Convener opened the meeting at 09:00]

Charities (Regulation and Administration) (Scotland) Bill: Stage 2

The Convener (Collette Stevenson): Good morning, and welcome to the 14th meeting in 2023 of the Social Justice and Social Security Committee. The only item of business on our agenda today is the committee's consideration of the Charities (Regulation and Administration) (Scotland) Bill at stage 2. The Cabinet Secretary for Social Justice, Shirley-Anne Somerville, joins us for the item. The cabinet secretary is accompanied by her officials, but they cannot take part in the debate and will not be named in the *Official Report*.

All members should have a copy of the bill as introduced, the marshalled list of amendments, which was published on 25 May, and the groupings of amendments, which sets out the amendments in the order in which they will be debated. There will be one debate on each group of amendments. I will call the member who lodged the first amendment in that group to speak to and move that amendment and to speak to all the other amendments in the group.

If members who have not lodged amendments in the group wish to speak, they should indicate that by catching my attention if they are in the room or by typing R in the BlueJeans chat box if they are online.

I will conclude the debate on the group by inviting the member who moved the first amendment in the group to wind up. Standing orders give any Scottish minister a right to speak on any amendment. I will, therefore, invite the cabinet secretary to contribute to the debate just before the winding-up speech.

Following debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it. If they wish to press it to a vote, I will put the question on that amendment. If a member wishes to withdraw their amendment after it has been moved, they must seek the committee's agreement to do so. If any committee

member objects, we will immediately move to the vote on the amendment.

If a member does not want to move their amendment when called, they should say, "Not moved". Please note that any other member may move the amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting in any division is by show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote. I ask members joining us online to make sure that their hand is clearly visible on the screen.

The convener has a personal vote as a committee member and a casting vote in the event of a tie. How I, as convener, use my casting vote is entirely at my discretion; there are no agreed conventions on this point. However, if my casting vote is to be used, I will indicate the basis on which I will use my casting vote immediately before doing so.

The committee is required to indicate formally that it has considered and agreed to each bill section and schedule, so I will put a question on each section at the appropriate point.

We will now consider the amendments.

Section 1 agreed to.

Section 2—Inclusion of names of charity trustees on the Scottish Charity Register

The Convener: Amendment 1, in the name of the cabinet secretary, is in a group on its own.

The Cabinet Secretary for Social Justice (Shirley-Anne Somerville): Good morning, convener.

Section 2 imposes a specific requirement to include the names of charity trustees on the Scottish charity register. As well as ensuring transparency and accountability in charities, the section aims to ensure that the publication of any information does not put anyone at risk. When the safety or security of any persons or premises could be jeopardised, an application for dispensation can be made to the Office of the Scottish Charity Regulator to exclude the charity's contact address or any trustee names from the register.

A discretionary element was added to the bill to allow OSCR to apply dispensations to a charity or class of charities without the need for an application—for example, in the case of a women's refuge charity. However, OSCR has expressed some concerns regarding that element of discretion. In particular, it is concerned that it might create an additional burden on OSCR to

look behind every charity entry on the register in order to ascertain whether dispensation should apply. That was not the intention of the provision.

Following discussion with OSCR, the Government is satisfied that the key policy intention can be achieved in other ways—for example, by OSCR taking the initiative to contact a particular charity or class of charities to discuss any security concerns with them and to invite applications for dispensation that could then be processed swiftly.

As such, amendment 1 adjusts the process to be followed before a dispensation is granted. It removes OSCR's ability to grant a dispensation of its own accord while retaining the ability to grant dispensation and remove the relevant information following an application from a charity or trustee.

I hope that the committee appreciates the need to overcome this technicality.

I move amendment 1.

Paul O'Kane (West Scotland) (Lab): I come to the bill without having heard all the evidence that other committee members have heard. What was the rationale for enabling OSCR to remove someone's details of its own accord? Would that have been done when there might have been a risk to the person who was registered? I just want to understand the Government's rationale in lodging an amendment that would mean that OSCR would not have that power.

Shirley-Anne Somerville: The rationale was to ensure that we provide OSCR with the powers to do what it needs to do, such as in the example that I gave in my introductory remarks of a women's refuge. If there is a threat to a trustee or a trustee feels that they might be threatened if their information is published, that information can be withheld. We are still upholding transparency, but we are respecting the specific circumstances in which a trustee, for understandable reasons, might not wish their details to be made public. Amendment 1 simply ensures the policy intent of the bill without imposing on OSCR what it might perceive as an additional burden.

Paul O'Kane: Thank you. I am just trying to understand. Amendment 1 removes OSCR's unilateral power to make a decision to remove someone's details, perhaps without their consent. Are there scenarios in which that power would be required? An individual might not see the risk to themselves, but there might be a wider risk meaning that action would need to be taken.

What discussion was there with OSCR on the provision? Was OSCR concerned that it would require that unilateral power?

Shirley-Anne Somerville: A charity can apply on behalf of an individual—even if an individual

was not in a position to apply for a dispensation or did not wish to, the charity could apply on their behalf. It is not just down to the individual. I hope that that reassures the member.

The amendment relates to specific concerns that OSCR raised about the impact of the discretion to grant dispensations of its own accord, because that would be a legal obligation.

Paul O'Kane: Thank you.

The Convener: Cabinet secretary, do you wish to wind up?

Shirley-Anne Somerville: I have no further comments.

Amendment 1 agreed to.

Section 2, as amended, agreed to.

After section 2

The Convener: Amendment 21, in the name of Jeremy Balfour, is in a group on its own.

Jeremy Balfour (Lothian) (Con): I remind colleagues that I am a member of the Church of Scotland and a retired Baptist minister.

The proposed new section that amendment 21 seeks to insert in the bill represents an attempt to balance the two things that we want the bill to do. We want there to be transparency so that the public can have the confidence of knowing who the trustees of every charity are and being able to hold them to account. At the same time, we want charities to be able to flourish and to attract trustees. The bill seeks to achieve that balance, and I think that, by and large, it has done so. That is why we support the bill. I should probably put on the record the fact that we will support the Government amendments as we go through them one by one.

However, in this particular area, I think that the balance has gone too far away from charities. The issue here relates to the process. The regulations that my amendment seeks to amend would be disproportionate and hugely costly for charities to implement. We heard in the stage 1 debate that what they require could cost the Church of Scotland alone more than £100,000. Last night, committee members received an email from the Episcopal Church that illustrated what it would have to do. In one diocese, it has 50 church buildings, 40 rectories or manses and 25 church halls, which comes to a total of 115 properties. With each congregation having a minimum of three associates, the number of registrations required would be five times 115 times three, which equals 1,725. That is for one diocese. That would have to be multiplied by seven to give the figure for the whole of Scotland.

All of that would require legal work to be done, with solicitors having to be involved every time. The bill already provides for a public register of charity trustees, so there is no hiding for trustees, but it would be time consuming and expensive to go through the proposed process. Over the past number of months, the committee has taken evidence on how hard it is for many people in our society to keep going—they are having to rely on things such as food banks, which are often provided by religious bodies. The question for the committee today is whether we want £100,000 to be spent on helping people to come out of poverty, helping children and young people and supporting all the activities that the various churches and religious organisations are involved in day in, day out or whether we want that money to go into lawyers' hands.

I think that amendment 21 gets the balance right. It would mean that there would be accountability and openness with regard to who trustees are, but there would not be a need to go through a slightly bureaucratic system that, as far as I can see, will only benefit lawyers.

I move amendment 21.

Paul O'Kane: I engaged in this discussion in the stage 1 debate, when I said that I shared several of the concerns that Jeremy Balfour and a number of churches have raised. The argument has been well rehearsed in the chamber and elsewhere. There is a challenge. Obviously, the Government has agreed to a year's grace period for the implementation of the provisions of the Land Reform (Scotland) Act 2016, but there is serious concern about the fact that, rather than a solution to the issue being put forward, we have simply had a pause.

There is a balance to be struck. Part of that balance is about ensuring that we have transparency with regard to who has a controlled interest in land and property. If we can ensure that information on trustees is transparently available via the Office of the Scottish Charity Regulator process, and thereby remove the burden from churches, it might be worth considering Jeremy Balfour's amendment in more detail. The Church of Scotland passed that deliverance at its general assembly just last week. We need to take cognisance of that.

09:15

I am keen to understand the definition of "religious charity" as outlined in Mr Balfour's amendment. Is there a legal definition of a religious charity? I am playing devil's advocate—pardon the pun—but I just want to understand whether, for example, someone could set up a religious charity to try to mask the fact that they

own land. I am not saying that that would happen; I am just trying to understand whether the term "religious charity" relates to a church or religious group or whether the definition is wider.

Shirley-Anne Somerville: On the point that has just been raised, my understanding is that there is no definition of a religious charity, which is one of the technical difficulties with the bill. For that reason and others, I cannot support the amendment in the name of Jeremy Balfour.

Fundamentally, charities regulation is in place to ensure and maintain public trust in the operation of charities. The register of persons holding a controlled interest in land, known as the RCI, is an essential part of the Land Reform (Scotland) Act 2016, and that legislation was passed unanimously. The purpose of the RCI is to improve transparency in relation to land and property assets, irrespective of what type of legal entity owns them, and to ensure that a direct link exists between the property and whoever exercises a controlled interest in that property. The bill seeks to increase transparency in relation to charities.

I appreciate that concerns have been raised about the RCI, particularly by the Church of Scotland, and my assumption is that Jeremy Balfour's amendment relates to those concerns. However, I must stress that a bill on charity regulation is not the place to try to address those concerns. Indeed, the amendment would change the obligations of the RCI, which have, as I have said, been debated in Parliament not just in relation to the 2016 act but in the discussions on the Scottish statutory instrument on the RCI.

The information that will be available on the Scottish charity register under section 2 of the bill is a charity trustee name. The RCI relates to transparency in ownership and control of property and, as such, requires additional information to simply a list of names. Therefore, the information that is required is not the same and the two registers are not like for like.

The Scottish Government has had considerable recent engagement with religious organisations, particularly the Church of Scotland, in developing the RCI regulations. To address the concerns of some religious stakeholders, the transitional period before offence provisions take effect for non-compliance was recently extended by 12 months to 1 April 2024, with the unanimous support of Parliament. That provides those who need to register with the RCI with more time to prepare their submissions.

All parties supported the introduction of the RCI, which is a key part of our land reform strategy. Parliament has made much progress on delivering greater transparency in relation to individuals who

have control over decision making in relation to land. The RCI regulations are a complex piece of legislation, and there is a risk that amendment 21 would lead to unintended consequences.

I therefore urge the committee not to support amendment 21.

The Convener: I invite Jeremy Balfour to wind up and to press or withdraw amendment 21.

Jeremy Balfour: I thank the cabinet secretary and Paul O’Kane for their contributions. As the cabinet secretary will be aware, we have already agreed on exceptions—for example, Scottish charitable incorporated organisations are excluded from the provision.

On Paul O’Kane’s point, I will have to check. I will not press the amendment, because I would like to clarify the matter. One of the charitable objectives is the promotion of religion, so I would have thought that the fallback scenario would be that, in order to get charitable status, you would have to prove to OSCR that you were a genuine religious organisation. However, I will seek to clarify that before stage 3.

I hear what the cabinet secretary is saying, but, with regard to the costs and the public benefit, to me, what we are hearing is more along the lines of not doing this. I just cannot see how it is appropriate. For some churches, it will be something that they will have to do annually, because the church secretary or the session clerk will keep changing and, every time that that happens, they will have to redo it, which will have a cost.

However, I would like to reflect on the points that have been made by the cabinet secretary and Mr O’Kane, so I will not press amendment 21.

Amendment 21, by agreement, withdrawn.

Section 3 agreed to.

After section 8

The Convener: Amendment 2, in the name of the cabinet secretary, is in a group on its own.

Shirley-Anne Somerville: Amendment 2 addresses the recommendation made by the committee at stage 1 to provide for a dispute mechanism in connection with OSCR’s appointment of interim trustees. The committee raised the issue that there was a lack of recourse for any existing charity trustees of a charity to which interim trustees are appointed. The amendment addresses that issue by extending the established review and appeal mechanism under the Charities and Trustee Investment (Scotland) Act 2005 to appointments of interim trustees in cases in which it is known that there are still some existing charity trustees continuing to act.

The new provision that is introduced by section 8 is designed primarily to capture those small number of cases in which there are no trustees acting for the charity. However, I accept that there might be some occasions on which an existing trustee could still be acting and a right of review over OSCR’s decision is warranted. The same is also true of the existing appointment process, which is restated by section 8.

In that scenario, although the aim is that the existing trustees would ask OSCR to step in because they are unable to make an appointment themselves, that request does not have to be unanimous. As such, I agree that it is right that there should be a review and appeal mechanism for any trustee who wants to challenge that decision. I hope that members will therefore support the amendment.

I move amendment 2.

The Convener: Thank you, cabinet secretary.

My apologies, but we will just move back to the previous group. The question should have been whether sections 3 to 8 were agreed to. I asked about section 3 but never picked up on the other sections. Therefore, the question is, that sections 4 to 8 be agreed to.

Sections 4 to 8 agreed to.

The Convener: Thank you so much for your forbearance. Do any members wish to contribute at this point?

Miles Briggs (Lothian) (Con): Good morning to the minister and her officials. I put on the record that I welcome amendment 2, which covers one of the key parts of our considerations. How it works in practice is something that we will want to see monitored, so I hope that the Scottish Government will do that, taking into account the limited numbers of cases for which this provision will be needed.

Amendment 2 agreed to.

Sections 9 to 11 agreed to.

Section 12—Recording of charity mergers and treatment of legacies

The Convener: Amendment 3, in the name of the cabinet secretary, is grouped with amendments 4 to 12.

Shirley-Anne Somerville: Amendments 3 to 12 refine the record of mergers provisions as introduced following discussions with OSCR about how they will work in practice. They do not alter the fundamental intent of the provisions, which is to ensure that legacies left to charities in wills are retained for the charity sector and that so-called

shell charities do not clog up the register simply for the purpose of collecting legacies.

Amendment 3 will provide that a transferee charity has a choice as to whether or not to notify OSCR of the merger rather than being under a duty to do so. Notification of the merger may be done at any time after the transfer of all property, rights and liabilities of the transferor is complete. Although we imagine that, in most cases, transferees will want to notify OSCR of a merger, we do not think that it needs to be a specific duty.

Amendments 4 to 11 will provide that the key date that will trigger the rules on redirection of a legacy will be the date on which notice of a merger is given to OSCR, instead of the date on which OSCR records the merger. That will mean that there is no risk of a legacy being lost due to a delay in OSCR recording a merger—for example, when a merger is notified just before a bank holiday and the testator dies during that weekend. OSCR must still keep a record of all charity mergers that are notified to it, and the record can be used as a reference point to establish what has been notified and when.

The amendments will also provide that a transferor charity will not need to have formally wound up or dissolved in order for the rule on redirecting legacies to apply, which should avoid disrupting any winding-up processes that the charity might have commenced, having already transferred all its property to another charity.

Amendment 4 will also give the Scottish ministers the power to clarify what is meant by notice being given. In most cases, the giving of a notice will be instantaneous, using email or OSCR's online system. However, where notification is sent by post, there might be a need to make specific rules around when a notification of a merger should be treated as having been given—for example, when delays occur due to postal strikes.

It might transpire that there is no need to bring forward regulations to clarify that type of point. However, given that section 12 introduces a new process, I want to ensure that any unforeseen issues relating to notification that arise in practice can be swiftly addressed, particularly once OSCR has established a process for dealing with merger notifications.

Amendment 12 corrects a referencing error in relation to the definition of a will.

I move amendment 3.

Miles Briggs: I welcome amendments 3 to 12. There is one point of clarification that I feel is still needed—maybe it is for stage 3—which relates to the situation of a United Kingdom-wide charity that is based in England and does research funding in

Scotland. That research project could have a legacy gifted to it from a Scotland-domiciled individual. Has that been captured in these amendments? The cabinet secretary might want to take that issue away and clarify it for stage 3, but I know of a number of charities that, for example, fund research projects in our universities, and individuals might donate or leave a legacy to those projects. I wanted to see these amendments lodged, but I wonder whether that situation has been captured or whether any legal advice has been taken on that scenario.

Shirley-Anne Somerville: I am happy to take that away and to provide an update to Mr Briggs and the committee, and we can address that at stage 3, if necessary.

Amendment 3 agreed to.

Amendments 4 to 12 moved—[Shirley-Anne Somerville]—and agreed to.

Section 12, as amended, agreed to.

After section 12

The Convener: Amendment 13, in the name of the cabinet secretary, is in a group on its own. Cabinet secretary, I invite you to move and speak to amendment 13.

Shirley-Anne Somerville: Amendment 13 introduces a new section to the bill, albeit that it is on a topic that has previously been subject to full public consultation. Amendment 13 seeks to clarify the existing provisions in the 2005 act that relate to the reorganisation of endowments held by what are often referred to, for shorthand, as statutory charities—that is, charities that are constituted under royal charter or royal warrant or an enactment. An endowment is property where the capital has to be preserved and only the income is spent on the fund's charitable purposes.

For most charities, if the charity's constitution would not allow it to take an action such as varying its constitution, transferring its property to another charity or amalgamating with another charity, the charity can apply for a reorganisation scheme to allow it to take that action, if OSCR grants consent.

09:30

However, those rules are turned off for statutory charities, subject to a specific exception relating to endowments. The wording of the existing provision has caused confusion for some statutory charities and OSCR about the extent to which an endowment can be reorganised by OSCR. In some cases, that has meant that the only way forward is through the use of private bills to reorganise endowments. My amendment 13 is intended to resolve that issue and to allow

endowments that are held by statutory charities to be reorganised, as we believe the 2005 act always intended.

It is not a straightforward area of the law and, as such, I anticipate that there might be a need for further technical refinement of the proposed new section at stage 3, once detailed feedback from charities, legal professionals and OSCR has been received.

Given the complexity that is involved, there are also wider issues around statutory charity reorganisation that would still need to be considered in the post-bill review. However, amendment 13 provides a solution in the short term for some statutory charities, and they should see significant financial savings by no longer needing to reorganise through a private bill.

It is right to deal first with fixing the rules around endowments, as there is a long historical precedent for those being allowed to reorganise more readily, and there is existing provision on which to build. It was also the current exception relating to endowments that OSCR asked us to clarify in its 2018 paper with the proposals that form the backbone of the bill.

Amendment 13 contains two new regulation-making powers for Scottish ministers. The first is a power to adjust the definition of “endowment”, should practical experience of the new provisions give rise to any issues.

The second power gives ministers the ability to disapply—through regulation—those changes in respect of particular endowments or charities, or classes of endowment or charity. The latter aspect is considered necessary in order to ensure that, where there are policy reasons for restricting the reorganisation of a particular endowment or charity, that can be achieved.

I hope that members will agree that we should do what we can do now to refine the provision on that topic that is already in the 2005 act. Then, in the post-bill review, we can turn to the much wider question of reorganisations that do not involve endowments.

I move amendment 13.

The Convener: As no members wish to contribute to the debate at this point, I ask the cabinet secretary to wind up and to press or withdraw amendment 13.

Shirley-Anne Somerville: I press amendment 13.

Amendment 13 agreed to.

Section 13 agreed to.

Section 14—Notice and obtaining information

The Convener: Amendment 14, in the name of the cabinet secretary, is grouped with amendments 16 and 20. I ask the cabinet secretary to move amendment 14 and to speak to all the amendments in the group.

Shirley-Anne Somerville: This group deals with notices that are given both by and to OSCR. I will speak to amendments 14 and 20 first, which deal with notices that are given by OSCR.

Amendment 14 makes a minor change when OSCR is obtaining documents from a third party for an inquiry into a former charity. The amendment clarifies the application of the rule that ensures that, when a body continues to exist but without charitable status, notice is served by OSCR on the body that used to be a charity.

Amendment 20 is designed to provide OSCR with alternative methods of serving notice in certain circumstances.

As part of its overarching duty to act in a fair, transparent and proportionate way, OSCR is required to serve notice on a charity or a charity trustee before it can take specified regulatory action—for example, issuing a direction.

However, in some cases, OSCR does not have accurate contact information for the charity or trustees in order to serve the notice, which means that OSCR is prevented from pursuing regulatory action, as it is unable to serve the required notice. Although the introduction of an internal schedule of trustee details held by OSCR will, in large part, address that problem, there will, inevitably, be cases in which contact information is unavailable or becomes out of date.

Amendment 20 will allow OSCR to serve the relevant notices by other means—for example, by publishing a notice on its website. Serving notice by other means would be used as a last resort when previous attempts to contact the charity directly had failed. That will allow OSCR to continue its regulatory action.

Amendment 20 relates only to notices in respect of which the action being taken is such that it is still appropriate to take it even if the charity or body in question cannot be contacted directly. For example, if a direction is issued to a bank not to part with charity funds but the charity also needs to be notified of the direction, there would be value in issuing that direction to the bank even if the charity itself cannot be located and can be notified only by means of a public notice.

I turn to notices that are given to OSCR. Amendment 16 addresses concerns that were raised by stakeholders—in particular, the Law Society of Scotland—about the current

requirement that charities wishing to take certain actions that require OSCR's consent give OSCR at least 42 days' advance notice before they take the relevant action.

Amendment 16 does not remove the need for charities to obtain OSCR's consent before taking such actions; it means that, once OSCR grants its consent, the charity will be able to act straight away, if it wishes, instead of having to wait until the end of the 42-day period.

I hope that the committee will agree with the approach that is being taken to all these notice requirements and that it will support all the amendments in the group.

I move amendment 14.

Amendment 14 agreed to.

Section 14, as amended, agreed to.

Sections 15 and 16 agreed to.

After section 16

The Convener: Amendment 22, in the name of Jeremy Balfour, is grouped with amendment 23.

Jeremy Balfour: Amendment 22 picks up something that came across in the evidence that we took at stage 1: third sector charities' awareness of changes in the bill—if it becomes an act—and the effect that it will have on them. Concern was raised by some charities and, in particular, by the Scottish Council for Voluntary Organisations, that the communication between OSCR and them had not quite worked and that some charities were unaware of what was proposed in the consultation and in the bill. There was concern that, if the bill becomes an act, charities might not be aware.

Amendment 22 therefore puts a bit of gentle pressure on OSCR to do a bit more on communication, and it allows the Parliament to have the satisfaction of knowing that that has happened, so that the Parliament—perhaps, in particular, this committee—can review matters in two years' time. I hope that that is helpful to OSCR and, more importantly, to the third sector.

When it comes to amendment 23, one of the striking things that came out in evidence was not what was in the bill but what was not in the bill. It would be fair to say that there was disappointment in certain sectors that the bill did not go further and faster. I understand that we had Covid and that the cabinet secretary has a lot on her plate, but there is an appetite in civic society generally for a more radical reform of charity law in Scotland.

I think that I am right in saying that, in the stage 1 debate, the cabinet secretary suggested that there would not be any further legislation in this

area during this parliamentary session. Again, I understand that, but I am concerned that, once the bill becomes an act—before the summer recess, I hope—the issue will go off our agenda and may go off the Scottish Government's agenda because other things are going on. Again, therefore, this is an opportunity for the Government to take forward what I know it wants to do, but at such a scale that this Parliament can at least see the direction that the Scottish Government is going in; then the next Parliament can take that forward, I hope, and bring forward more legislation. Amendment 23 represents an encouragement—a stick and a carrot, I hope—for the Scottish Government, which, I am sure, the cabinet secretary will welcome.

I move amendment 22.

The Convener: As no members wish to comment on this group of amendments, I invite the cabinet secretary to comment on it.

Shirley-Anne Somerville: Amendment 22 appears to follow on from a recommendation that was made in the committee's stage 1 report. In my response to that report, I agreed that

“effective and open communication ... is vital ... to ensure smooth implementation”.

OSCR also wrote to the committee to set out an initial outline for communicating changes to charities. In addition, it confirmed that it would share its plan with the committee ahead of engagement with the sector.

Amendment 22 focuses on charities with two or fewer employees, but that covers 73 per cent of charities. OSCR would, in any event, be expected to aim its support and guidance at the majority of charities. The amendment also requires OSCR to communicate with each charity, but at present it is not possible for OSCR to do that. That is why we have put section 11 in the bill and lodged amendment 20. There are more than 25,000 charities and, although OSCR has contact details for the majority of them, communicating with each one is not technically possible.

However, I am sympathetic to what Mr Balfour is trying to achieve. I would be happy to work with him on a stage 3 amendment that would enhance OSCR's existing reporting requirements. I therefore urge him not to press amendment 22.

Amendment 23 would require ministers to carry out a review of the act that the bill becomes, starting six months after royal assent, and to lay a report before the Parliament

“no later than 31 December 2025”.

We do not expect the act to be brought into force within six months after royal assent, so there would be no experience of the act in practice at

that point. Also, an adequate amount of time is needed for an act to embed so that evidence for a review can be gathered.

Jeremy Balfour: I appreciate the comments that the cabinet secretary has made. Would she be open to negotiation before stage 3 about a later date? The principle of amendment 23 is that a review must take place before the current parliamentary session finishes, which is in three years' time. Does she accept that principle? If so, would she be open to discussions before stage 3 about dates?

Shirley-Anne Somerville: I would be open to that, but I am not sure that it would have the effect that Mr Balfour would want. I say that because, if we agreed to an amendment that included a timescale for a review that fitted better with the commencement plans, it would be necessary to divert resources from the wider review that we, as a Government, have already said we will undertake once the bill is enacted. We would be obliged to carry out a review even if nobody was calling for it or had any issues in practice. I do not believe that that is the right approach, particularly when any stakeholders who might want to raise specific points relating to the bill will be engaging with the wider review that we have committed to and will no doubt raise any points there that they want us to consider.

For those reasons, I am afraid that I have to say no to Mr Balfour—I would not be open to that. I do try to oblige Mr Balfour with amendments and assistance, but I will not in this case.

Convener, as I have set out to the committee previously, the Scottish Government intends to take a phased approach to implementation, with at least two sets of commencement regulations anticipated in spring 2024 and summer 2025. That is to allow charities and OSCR the time that they need to prepare for the changes and to give OSCR the opportunity to consult the sector, produce guidance and communicate the changes. The Parliament has the ability to conduct post-legislative scrutiny of any act, so it is not necessary for such actions to be specified in the bill, particularly if the specified timings for them do not align with the expected commencement of the bill.

As I have already mentioned, the Government is committed to conducting a much wider review of charity regulation following commencement of the bill. My officials are already preparing the groundwork for that, and I have carried out meetings on the issue as well. I am committed to working with the sector to shape that review and to ensure that there is a proper opportunity for engagement. During stage 1, members and stakeholders were very clear about the importance of doing that, and I very much agree. A review of

the bill would, as I have said to Mr Balfour, hold up that wider review by diverting resources. I therefore urge the committee not to agree to amendment 23 if Mr Balfour moves it.

The Convener: I invite Jeremy Balfour to wind up and to press or withdraw amendment 22.

Jeremy Balfour: I am grateful for the cabinet secretary's remarks about amendment 22. In the light of her offer to work on something that would perhaps be better before stage 3, I will not press amendment 22.

Amendment 22, by agreement, withdrawn.

The Convener: I call amendment 23, in the name of Jeremy Balfour, which has already been debated with amendment 22. I invite Jeremy Balfour to move or not move the amendment.

Jeremy Balfour: On a point of order, convener. Do we not have to go back and move the other amendments? We have not moved every other amendment yet, have we?

The Convener: You withdrew amendment 22.

Jeremy Balfour: It was amendments 14, 16 and 20. Have they been moved yet?

The Convener: I will suspend the meeting until we get clarification on that.

09:45

Meeting suspended.

09:47

On resuming—

The Convener: We will commence the meeting again.

Amendment 23 not moved.

Section 17 agreed to.

Schedule—Further modification of the 2005 Act

The Convener: Amendment 15, in the name of the cabinet secretary, is grouped with amendments 17 and 19.

Shirley-Anne Somerville: These are three very minor amendments. Amendment 15 removes a redundant cross-reference. Amendments 17 and 19 modify two of the headings in the 2005 act, which OSCR and the Charity Law Association, respectively, flagged as being potentially confusing or inaccurate. My thanks to them for highlighting those points.

I move amendment 15.

Amendment 15 agreed to.

Amendments 16 and 17 moved—[Shirley-Anne Somerville]—and agreed to.

The Convener: Amendment 18, in the name of the cabinet secretary, is in a group on its own.

Shirley-Anne Somerville: The 2005 act retained the concept of designated religious charities, or DRCs, which existed under preceding legislation. The rules in the 2005 act recognise that many religious bodies operate effective self-regulatory mechanisms by having an internal organisation with supervisory and disciplinary functions and seek to avoid overregulating such charities.

However, the 2005 act places restrictions on whom OSCR can share information with and for what purpose. In general, information can be shared only with public bodies and office-holders for the purpose of enabling or assisting in the exercise of either OSCR or the body's functions. As a DRC is not a public body and the information to be shared by OSCR would not be for the exercise of its own function, it is not currently permitted.

The bill does not seek to change that original policy intent of the 2005 act. It seeks to address a practical issue identified by OSCR and the DRCs around the ability to share information. Amendment 18 will enable OSCR and the DRCs to share information if necessary for any purpose connected with the exercise of OSCR's functions or for the purpose of enabling or assisting the DRC to exercise any supervisory or disciplinary functions that it holds in relation to its component elements.

For example, when OSCR receives information from an auditor or independent examiner in relation to the accounts of a charity that is a component part of a DRC, OSCR is currently unable to share that information with the relevant DRC. That DRC, in turn, is then unable to fulfil its regulatory functions. This small amendment will allow DRCs to fully exercise their functions in respect of their component parts, thereby improving and enhancing the regulation of those charities. The amendment makes sure that the current arrangements with DRCs can work properly and that the original policy intent is not hampered by the inability to share information when necessary.

I hope that the committee will agree with the approach that is being taken here and will support amendment 18. As the current position is that some charities are designated as DRCs, the bill needs to ensure that they can exercise their functions as intended by the 2005 act.

I move amendment 18.

Amendment 18 agreed to.

Amendments 19 and 20 moved—[Shirley-Anne Somerville]—and agreed to.

Schedule, as amended, agreed to.

Sections 18 to 20 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the cabinet secretary and her team for joining us.

I confirm that amendments for stage 3 can now be lodged with the legislation clerks.

Meeting closed at 09:53.

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