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# Consultation on Scottish Charity Law: NSS response

## Introduction

1. The National Secular Society (NSS) works for the separation of religion and state, and for equal respect for everyone's human rights so that no one is either advantaged or disadvantaged on account of their beliefs. We regard secularism as an essential feature of a fair and open society.
2. We welcome the opportunity to respond to the Scottish Government's consultation on charity law. We believe it is a positive step to re-assess charity law and OSCR's role in regulating charities. We agree that increasing transparency, accountability and public trust in charities, and cracking down on abuses of charity status, will benefit the sector as well as the general public.
3. Our response omits answers to questions we consider to be beyond our remit and area of expertise.
4. We would also like to use this opportunity to propose fundamental changes in the defined 'charitable purposes'. Specifically, we recommend removing 'the advancement of religion' from this list of purposes. We attach our recent report, *"For the public benefit? The case for removing 'the advancement of religion' as a charitable purpose"* that outlines our argument for this change in more detail; we have also summarised the argument at the end of this document. The report can also be downloaded from [www.secularism.org.uk/charities/charity-report](http://www.secularism.org.uk/charities/charity-report)

## SECTION 1: Publishing annual reports and accounts in full for all charities on the Scottish Charity Register

5. We agree that OSCR should be able to publish charity annual reports and accounts in full for all charities. This will increase transparency and public confidence.
6. Our *'For the public benefit?'* report uses publicly-available charity reports and accounts to highlight where particular charities are using their funds on activities that do not appear to benefit the public. In some cases, accounts data has helped us identify charities that may be misusing their funds or committing fraud. The availability of public accounts is vital for whistleblowers and watchdog groups such as ourselves to identify where charitable status may be subject to abuse, and raise our concerns with the regulator.
7. For example, we identified a charity registered in England, Ezer V' Hatzalah Ltd, that stated it gave £12 million in grants to "charitable institutions" for "advancement of religion and education." However, it did not disclose any further details even after multiple requests

from the NSS. The NSS has since raised this with the Charity Commission for England & Wales.

## SECTION 2: An internal database and external register of charity trustees

8. We agree that OSCR should be able to collect the trustee information noted for use in an internal database. We also agree that the names of trustees should be published on the external public register. Both would aid in ensuring transparency and compliance.
9. In our work holding religious organisations to account when they are acting improperly, we frequently make use of the availability of trustee data to identify links between charities, and to highlight where trustees may be unsuitable for running a charity.
10. For example, one of the trustees of the Islamic Research Foundation International (IRFI), registered in England, is Dr Zakir Naik. Naik has been denied entry to the UK due to the extremist views he preaches. Because his status as a trustee of IRFI is public, the NSS and others have been able to raise the issue of Naik's suitability with the Charity Commission for England & Wales.
11. We also agree that names of trustees who have been removed following an inquiry by OSCR should be published on the external public register, again for reasons of transparency and accountability.

## SECTION 3: Criteria for automatic disqualification of charity trustees and individuals employed in senior management positions in charities

12. We agree that the criteria for disqualification and removal of charity trustees should be extended to match the criteria in England and Wales. Ensuring that only people of good character can become charity trustees would help to protect charities from abuse.
13. For the same reason, we agree that the criteria for disqualification and removal should also be extended to those in certain senior management positions.

## SECTION 4: A power to issue positive directions to charities

14. We agree that OSCR should be given a wide-ranging power to issue positive directions. This would bring OSCR in line with the Charity Commission for England and Wales and the Charity Commission for Northern Ireland. We agree that this would enhance OSCR's inquiry and enforcement powers.
15. If a charity failed to comply with a positive direction that OSCR had issued, we think this should be classed as trustee misconduct. Respect for the directions of the charity regulator should be a basic obligation for a charity trustee.

## SECTION 5: Removal of charities from the Scottish Charity Register that are persistently failing to submit annual reports and accounts and may no longer exist

16. We agree that OSCR should be able to remove charities from the Scottish Charity Register if they have persistently failed to submit annual reports and accounts. Failure to submit accounts should be classified as a form of mismanagement/misconduct, and charities that are repeatedly mismanaged must be penalised. Additionally, removing charities from the register that repeatedly fail to submit annual reports and accounts would reduce administrative burdens for OSCR and streamline the charity register. It would also improve public confidence in the sector because the public could reasonably trust that no defunct organisations, or organisations that fail to comply with accounting and reporting regulations, are still registered as charities.
17. In order to preserve transparency, we would recommend that any removed charities still be recorded in a public database, with additional information about why the charity was removed.
18. We agree that OSCR should be given a positive power of direction to direct a charity to prepare annual reports and accounts, and that failure to comply should result in being classed as trustee misconduct.
19. A combination of powers to remove charities that repeatedly fail to submit annual reports and accounts from the Scottish Charity Register, and to give direction to a charity to prepare annual reports and accounts, would cover both those charities that do not file accounts because they are defunct, and those that do not file accounts through incompetence or deliberate attempts to conceal financial mismanagement/misconduct.

## SECTION 6: All charities in the Scottish Charity Register to have and retain a connection to Scotland

20. We agree that all charities registered in Scotland should be required to have and retain a connection with Scotland. This will help OSCR to regulate them effectively and ensure that they are providing a public benefit to the people of Scotland.

## SECTION 7: Inquiries into the former charity trustees of bodies which have ceased to exist and bodies which are no longer charities

21. We agree that OSCR should be able to make inquiries into former trustees of a body which is no longer a charity, a charity which has ceased to exist and individuals who were in management and control of a body which is no longer controlled by a charity. This will help ensure trustees who are guilty of serious misconduct are properly held to account, and that they do not go on to become trustees of other charities.

22. This is particularly important in cases involving misconduct around child safeguarding, because the victims of such abuse are often only able to report what happened to them years after the incident when they are adults.

## SECTION 8: De-registered charities' asset and public benefit

23. We advise caution in introducing any new requirements for de-registered charities to use the assets held at the time of removal from the Scottish Charity Register to provide public benefit.
24. This is because we think activities that were once presumed to be a public benefit may be deemed not beneficial by today's society. This includes certain activities that are classified as 'advancement of religion'. Charities whose activities are no longer deemed to be a public benefit should have a means of de-registering and continuing to use their assets to proceed with those activities as a non-charitable organisation.

*(Sections 9 and 10 omitted as we consider their scope to be beyond our remit)*

## Additional proposal: Removal of 'the advancement of religion' as a charitable purpose

25. We think this consultation provides a good opportunity for the Scottish government to re-examine the 'charitable purposes' as defined by law. Specifically, we believe 'the advancement of religion' should be removed as a charitable purpose.
26. Although advancing religion may have historically been considered a public benefit, Scottish society today has changed considerably. According to a 2018 survey, 59% of Scots are non-religious and 60% have never attended church outside of weddings or funerals. In the same survey, the non-religious were a majority of all age groups under 65, including 69% of 18-24-year olds.<sup>1</sup>
27. The activities of some religious charities, although benign, would not be considered a public benefit by many members of the public, and should therefore not be eligible for the tax exemptions and other benefits that charitable status brings. This includes evangelism work such as proselytising and publishing religious literature.
28. Other religious charities promote or facilitate activities that are harmful. This includes non-therapeutic infant circumcision, non-stun animal slaughter, extremist political activity and 'gay conversion therapy'.
29. Including 'the advancement of religion' as a charitable purpose means charity regulators have to define what a 'religion' is. This results in inconsistent and unequal treatment of particular religions. Charities promoting popular and well-established religions, including

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<sup>1</sup> <https://www.secularism.org.uk/news/2018/08/scottish-govt-commits-to-faith-schools-despite-religious-decline>

Christianity, Islam and Judaism, find themselves under less scrutiny at registration compared with newer religious movements such as Paganism and Scientology.

30. Removing 'the advancement of religion' would not prevent religious organisations that can demonstrate a genuine, tangible public benefit from being charities. They would simply need to register under a different charitable purpose.
31. Benefits of removing 'the advancement of religion' as a charitable purpose include: reducing administrative burden for charity regulators; improving public confidence in charities and charity regulators; equal treatment of all charities regardless of their religious or secular ethos; increasing funds available for public spending; preventing charities from conducting harmful activities under the guise of 'religion'.
32. For a more detailed exploration of this proposal, please see our report:  
[www.secularism.org.uk/charities/charity-report](http://www.secularism.org.uk/charities/charity-report)

For more information, please contact:

Megan Manson

Campaigns officer

National Secular Society

[megan.manson@secularism.org.uk](mailto:megan.manson@secularism.org.uk)

(You may publish this response under our organisation's name)