



Law Society  
of Scotland

# Consultation Response

## Annual Return 2023 – Forthcoming Changes

October 2023



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Charity Law sub-committee welcomes the opportunity to consider and respond to the OSCR consultation: *Annual Return 2023 – Forthcoming Changes*.<sup>1</sup> In addition to the ‘Annual Return Feedback document’ available on the OSCR website, we have also had sight of further Appendices 2 and 3 as part of direct stakeholder engagement with OSCR. The sub-committee has the following comments to put forward for consideration.

## Consultation Questions

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### Question 1

**We welcome comments on the new questions, specifically:**

**a) Are the questions clear and understandable?**

**b) Is more explanation needed to help understand what the questions mean? – if so, please explain which questions need this and what further explanation is needed.**

Generally, we consider that the questions are clear and understandable. However, there are some questions where the answers provided by a charity could indicate serious governance issues and potentially a failure to comply with legal duties. In these cases, we would suggest that the wording in any prompts and guidance issued to charities should make this clear for example by using ‘must’ instead of ‘should’ to highlight a requirement under charity law.

On a formatting point, we note that in several cases there is a mismatch between the question numbers in Appendix 1 and the cross-references in Appendices 2 and 3. No doubt these will be ironed out at the next stage of revision.

<sup>1</sup> [OSCR | Share your feedback on improvements to the Annual Return](#)

We have the following comments on specific questions:

**Question A2-** it may be helpful to expand the pop-up information offered on the meaning of ‘Charity Trustees’ for the purposes of this question (see Appendix 3, where the cross-reference should be to ‘A2’). We would suggest that this should be by way of reference to the definition in the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) with appropriate explanation and examples from the range of possible legal forms, to avoid any confusion. Similarly, we suggest that the term ‘Charity Trustees’ should be used in full throughout the revised Annual Return material, rather than the shorthand ‘trustees’, to avoid confusion with ‘trustees’ in the strict sense of the trustees of a trust.

**Question A4-** we would suggest that guidance be provided on the meaning of volunteers for the purpose of this question. Some charities use this term in different ways, including to cover those who donate to the charity. Further clarification on OSCR’s intentions in seeking this information may assist charities to answer accurately.

**Question C3-** we suggest that the guidance on this question (see Appendix 2, Guidance Paragraph 3) be refined to emphasise that a charity should only undertake activities authorised by its governing document, and that where new activities are envisaged which go beyond the terms of the governing document, the governing document must be amended to provide the necessary authority. See further under Question 2(a) below.

## **Question 2**

**Do you agree that the following should be published on each charity’s entry in the Scottish Charity Register:**

**(a) The description the charity has provided of the activities they undertake**

**(b) Number of charity trustees**

**(c) Number of volunteers**

**(d) Numbers of staff**

We do have some concerns regarding point (a), the description the charity has provided of the activities they undertake, being published on each charity’s entry in the Register. Whilst we understand the rationale for making information about a charity’s activities more readable for the public, we are concerned that allowing a charity to provide this information in its own words in free text may contribute to “mission creep” within the sector as charities move away from the terms of their constitution. We would also question what arrangements will be in place to check the accuracy and suitability of this information before it is published on the Register.

See our comments above regarding the need for clarity on the meaning of ‘trustees’ and ‘volunteers’ for the purposes of the annual return.

**Question 3**

**Is there any additional information which should be published on the Register?**

We have no further comments.

**Question 4**

**Comments are welcome on the impact assessment, particularly any areas of impact (positive or negative) not identified.**

We have no further comments.

**For further information, please contact:**

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