Finances Committee

Agenda

2nd Meeting, 2005 (Session 2)

Tuesday 18 January 2005

The Committee will meet at 10.00 am in Committee Room 4 to consider the following agenda items:

1. Transport (Scotland) Bill - Financial Memorandum: The Committee will take evidence on the Bill’s Financial Memorandum from—

   Lucy McTernan, Director of Corporate Affairs and Paul White, Director of Networks, Scottish Council of Voluntary Organisations; then

   Richard Arnott, Head, and Quentin Fisher, Deputy Head, Bill Team, Scottish Executive Development Department and Jane Ryder, Chief Executive, Office of the Scottish Charities Regulator.

2. Transport (Scotland) Bill (in private): The Committee will consider its draft report on the Bill’s Financial Memorandum.

Susan Duffy
Clerk to the Committee
The papers for this meeting are:

**Agenda Item 1**

Charities and Trustees Investment (Scotland) Bill, Explanatory Notes and Policy Memorandum

SPICE Briefing Note

Written evidence

PRIVATE PAPER

**Agenda Item 2**

Written evidence

PRIVATE PAPER
Finance Committee

2nd Meeting 2005 – Tuesday 18 January 2005

Charities and Trustee Investment (Scotland) Bill - Financial Memorandum
Written Submissions

1. Subsequent to its meeting on 21 December 2004, the Committee has received further submissions from the following organisations:
   - Royal Botanic Garden Edinburgh (revised submission)
   - Scottish Council for Voluntary Organisations
   - Scottish Federation of Housing Associations
   - Anne Swarbrick (supplementary submission)
   - Office of the Scottish Charities Regulator
   - Institute of Chartered Accountants of Scotland

2. In addition, a copy of correspondence from the Minister for Communities to the Convener of the Communities Committee is included.

3. The Committee is invited to consider these submissions.

Emma Berry
January 2005
SUBMISSION FROM ROYAL BOTANIC GARDEN EDINBURGH

Consultation
RBGE did take part in the Scottish Executive Forum, post McFadden. At the time of that process our understanding was that the national cultural institutions would not be affected by the Bill. There has been very little consultation since then.

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Financial Memorandum does not accurately reflect the financial implications of the Bill for RBGE at all. Under the Bill as drafted RBGE will lose charitable status, because as an NDPB it is under the direction of Ministers, and cannot pass the Charities test of independence. Loss of charitable status has very significant financial implications for Royal Botanic Garden Edinburgh, and this is certainly not cost neutral to the RBGE. The costs are detailed below (all figures relate to 2003/04 unless otherwise specified):

4.1 Loss of Significant Tax Benefits

4.1.1 Charitable Rate Relief
RBGE will lose charity exemption on property rates, being currently £0.2M across all its sites. This figure is expected to increase after revaluation.

It would be essential for the Scottish Executive to compensate RBGE for this loss through an equivalent adjustment to Grant-in-Aid. In principle this would be budget neutral to the Scottish Executive, as the Executive would be able to recover from the block grant to Local Authorities. However a mechanism would need to be in place to effect this.

4.1.2 Charitable Tax Relief – Revenue Fundraising/Gift Aid
Charitable tax reliefs are essential to encourage giving outwith capital campaigns. Last year RBGE received grants of over £500,000, which would not have been given without charitable status. RBGE and its supporters would lose a range of charitable tax relief. In addition there would be a wider impact from the public reaction to RBGE no longer being a charity. This is likely also to affect support such as sponsorship in kind.

Specific losses are noted below:

RBGE would not be able to enhance the value of donations made under Gift Aid, which increases the benefit by 28% at no cost to the donor. RBGE loss estimated at £80,000 in relation to this.

Donors who pay higher rate tax (ie. those most capable of making significant donations) would not be able to claim higher rate relief through their self-assessment tax return.
Gifts to RBGE (both lifetime gifts and legacies) would not be exempt from Inheritance Tax. Could cost on average around £200,000/year+.

A donor making a gift to RBGE in the form of shares would no longer benefit from Capital Gains Tax exemption and would not receive Income Tax relief of 100% of the market value of the donated shares.

4.1.3 Charitable Tax Relief – Capital/Campaign Fundraising
Charitable tax relief is absolutely essential to capital fundraising within the private sector for visionary capital development projects such as the Museum of Scotland and the Royal Museum Masterplan, most of which are successful public/private partnerships:

The RBGE Gateway Project is a visionary £13 million project which will transform the West Gate into the centre for biodiversity communication in Scotland, with much improved public access, new learning centres, public facilities and new displays. It is envisaged that the largest proportion of funds will be raised from the private sector, with the balance of funding sought from the Scottish Executive. Without charitable status it will be virtually impossible to raise private sector support, and the project will be at risk, despite having raised £1 million already through private donations. For example:

At least £3 million would be sought from Charitable Trusts. Most of the larger trusts would not give direct to RBGE without charitable status.

At least £2 million would be sought through personal gifts. Some givers will not be comfortable with giving to RBGE without charitable status. Some givers will prefer to give via their Charitable Trusts – a route which would be closed to them without charity status.

4.2 Philanthropic Support for Major Cultural Projects
In addition to the specifics of loss of eligibility for tax reliefs, loss of charitable status by organisations such as RBGE and others like it, raises much wider issues of the principles on which much philanthropic support is based. A number of major cultural projects in Scotland have come about as a result of successful public/private partnership for capital funding. The realistic prospect of private sector support is an essential requirement in order to lever public and lottery funding. However, without charitable status the vast majority of private contributions would not have been forthcoming. Trusts and Foundations largely restrict their donations to charitable bodies. Individual donors are exceedingly reluctant to give to non-charitable public institutions and many give through charitable trusts.

4.3 Scottish Institutions in Comparison with Institutions in England and Wales
Under proposed charities legislation for England and Wales, the national cultural institutions will retain charitable status and will be regulated by the Department of Culture, Media and Sport or DEFRA. The current draft of the Scottish Bill will, if un-amended, place institutions in Scotland at a distinct competitive disadvantage to their English counterparts. Whilst the Royal Botanic Garden Kew, the British Museum, the National Gallery, the British Library and the Science Museum will move forward with visionary plans, raising millions of pounds of philanthropic
support, Scotland’s national cultural bodies will be deprived of such support through charitable giving. If RBGE loses charitable status, and no alternative arrangement is put in place, there can be little doubt that the philanthropic support currently enjoyed will be directed elsewhere. In the longer term, this will not only undermine our ability to perform our core duties as custodians – and champions - of our cultural heritage, but will also impact on the attractiveness of Scotland as a tourist destination and as a major business centre in Europe.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think that these costs should be met? RBGE would not be able to meet the financial costs of the Bill, which would result from loss of charitable status. These fall into two categories:

5.1 Loss of tax reliefs and revenue donations. These relate to relating to rates and revenue donations. These are estimated in 4.1.1 and 4.1.2 as:

<table>
<thead>
<tr>
<th>Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rates</td>
<td>£ 200,000</td>
</tr>
<tr>
<td>Revenue donations + other income</td>
<td>£ 400,000</td>
</tr>
</tbody>
</table>

RBGE would have to seek additional Grant-in-Aid from Scottish Executive in compensation.

5.2.1 Loss of private sector charitable giving on major capital projects
As estimated in 4.1.3 and 4.1.4 above. It is very unlikely that the Scottish Executive would be able to replace these funds. RBGE would have to curtail development of its collections, its public services and its large capital projects which are the means to ensure continuation of an excellent standard of service to visitors from Scotland and overseas.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
Loss of charitable status would mean a permanent reduction in the level of private sector support for RBGE.

Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
The costs of the Bill to RBGE and to other cultural institutions which are NDPBs, comprise the costs consequent upon loss of charitable status. The Explanatory Notes to the Bill estimate these as up to £7 million for tax reliefs and Gift Aid (based on 2002 figures) as the loss for the whole NDPB sector. In our opinion this is a very substantial underestimate. The revenue costs to RBGE alone are estimated as £0.6m per annum (See 5.1 above).

The impact on capital projects which involve substantial private sector charitable giving are set out above with examples. For the reasons given above most capital projects involving a public/private sector partnership will simply not be viable without
charitable status available to the client organisation. The opportunity costs to the people of Scotland in terms of lost cultural assets and activity will be enormous.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so is it possible to quantify these costs?

The costs associated with the Bill will be the costs outlined above rising from loss of charitable status by the national cultural institutions, as outlined above.

SUBMISSION FROM SCOTTISH COUNCIL FOR VOLUNTARY ORGANISATIONS

Introduction

SCVO is the representative umbrella body for the voluntary sector in Scotland. Our 1200 members represent a vast constituency covering the majority of charitable activity in Scotland. This submission is endorsed by the elected SCVO Policy Committee, which represents large and small, local, national and international organisations, covering many different fields of activity.

Our lengthy experience of and our close contact with the sector allow us to speak with some authority about the likely impact of the changes upon it as they are laid out in the Charities and Trustees Investment (Scotland) Bill.

Key Issues

We accept that there will be some cost for charities associated with complying with the new provisions of the Bill. We believe that, in general, the benefit to the sector of effective compliance outweighs the impact of any costs. However, we wish to raise the following points:

1) A light-touch monitoring regime and cost effectiveness

The Office of the Scottish Charity Regulator (OSCR) should operate a light-touch monitoring regime in keeping with the grain of the information that the charitable sector already collects. For example, when it comes to accounts the sector is already obliged to produce detailed information and present it in an accessible way.

We hope that such a regime is the intention and presumably this is the assumption behind paragraph 149 of the explanatory notes, which suggests there will be no extra costs on the sector in terms of new accounting regulations, which will be generated by an Act.

However the Executive’s intention (paragraph 150 of the notes) is that the Charity Statement of Recommended Practice (SORP) will occupy a much greater position in the presentation of the accounts of Scottish charities than previously. OSCR’s pilot annual return form also uses sections that relate to accounts presented using the SORP. Yet it has been shown by the Dundee University Charity Law Unit in research commissioned by the Scottish Executive that the SORP is scarcely used by all but the largest charities in Scotland. Because the presentation of accounts that follow the SORP can be a complex task it is likely that there will be an increased costs for their preparation for organisations that have not previously required them in this form. It is inaccurate to suggest there will be no cost and we
would advocate that the Executive consults with the sector and the accountancy profession to gauge a realistic figure.

SCVO agrees that OSCR must be sufficiently resourced to carry out its appointed tasks. However, the increase in its budget by £1 million per annum does not suggest the provision of the light-touch regime that we believe is both desirable and possible, especially given the general willingness of the sector to cooperate with OSCR.

OSCR has argued that its proposed detailed questionnaire based approach to the collection of data that is included in accounts – rather than the submission of the accounts themselves - is to reduce the burden on OSCR. While SCVO’s experience of similar data collection demonstrates that the burden won’t in fact be reduced, this position also begs the question as to why the burden of regulation should fall so heavily to charities rather than on the regulator.

OSCR should seek at all times to minimise the bureaucracy required of charities of all sizes and types, allowing the maximum time and resources of charities (and those that work for and govern them) to be devoted to charitable endeavours and not diverted to dealing with red tape. If OSCR establishes a mutually beneficial light touch approach to monitoring that does generate an unnecessary overabundance of information being submitted to it surely OSCR itself will be able to operate in a more cost effective way.

As a new body OSCR is ideally placed to bring together those with experience and knowledge of charity reporting, including representatives of the sector, in order to construct a model of reporting for charities that both gathers truly relevant information and is mutually cost effective.

Rather than increasing the money available to OSCR it may be better spent enabling this process to take place and in resourcing training and governance improvement in the sector (as below).

2) The cost of training for compliance
The Financial Memorandum (paragraph 139) includes an estimate that ‘training seminars to raise awareness of the new legislation amongst charities’ would cost £150,000 for the sector based on £5,000 per 100-delegate event. This would appear to be based on holding 30 events reaching 3000 attendees. It is utterly unclear where the 3000 figure comes from.

We consider that considerably more people would require direct training of the kind described. Given that any shortfall between training costs and available funding would impact upon the sector itself we consider the figure of £150,000 to be wholly unrealistic. A figure ought to be arrived at only after proper consultation with the sector.

Incidentally, it is not quite clear how the acknowledgement of this cost squares with paragraph 156 of the Financial Memorandum which states that there should be no additional costs associated with the duties of charity trustees contained in the Bill.
3) Ensuring good governance
SCVO has, in fact, identified that the need for adequate training in all aspects of governance of voluntary and charitable organisations is now a key priority for the sector. We believe that the new Bill provides an opportunity for the Executive to think beyond compliance costs with respect to the Bill alone and work with the sector and OSCR to plan and deliver a comprehensive programme of good governance for the sector. This will strengthen the sector in Scotland in a way that is absolutely crucial in maintaining and improving its current and future capacity and level of volunteer involvement.

The issues of compliance and good governance costs in general were raised by delegates during both the Executive’s consultation meetings and the Communities Committee pre-legislative meetings with the voluntary sector on the draft Bill.

4) Cost of registration
It is not clear to us how the Executive has arrived at the figure of £2000 used in paragraph 130 of the Financial Memorandum and therefore it is difficult to gauge its accuracy. However, £2000 is a substantial cost by any reckoning and even a charity that might appear to be able to afford it ‘on paper’ might struggle to allocate further resources to administrative requirements, possibly at the expense of delivering on its charitable objectives.

Conclusion
We believe that a more careful and consultative consideration by the Executive of the costs associated with the Bill, taking into account the issues we have raised, will truly help to make this Bill the effective piece of legislation that we all look forward to, one that will ensure a thriving Scottish voluntary sector working for the benefit of Scotland, now and far into the future.

This questionnaire is being sent to those organisations that have an interest in, or which may be affected by, the Financial Memorandum for the Charities and Trustee Investment (Scotland) Bill. In addition to the questions below, please add any other comments you may have which would assist the Committee’s scrutiny.

SUBMISSION FROM SCOTTISH FEDERATION OF HOUSING ASSOCIATIONS

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

The Scottish Federation of Housing Associations did take part in the Bill consultation process and made a submission. We did not however make any comment on the financial assumptions made in the memorandum.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

N/a
3. Did you have sufficient time to contribute to the consultation exercise?
Yes

Costs
4. If the bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The SFHA is a representative organisation for housing associations and co-operatives in Scotland and therefore the impacts will be felt by our members and not this organisation itself. However, these costs should be relatively minimal in terms of housing associations and co-operatives, as they are already subject to the regulation of Communities Scotland, and under the current Bill proposals, the day to day regulation of charitable Registered Social Landlords would continue to be carried out by Communities Scotland. There may be costs implications if the issue of trading activity is not dealt with, but as this is a reserved matter and currently under discussion as part of the Westminster Bill, it is not relevant here.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

The Federation is confident that any associated costs can be met by housing associations and co-operatives as these should be relatively minor, but note that our members’ income is from tenants’ rents and therefore any cost in terms of compliance could have an impact on service provision.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

No comments are offered on this.

Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
Yes.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

There may well be further costs for some organisations, but these should be relatively minor, associated with changes to constitutions, registration with OSCR, changes to letterheads and so on. Such costs may amount to a few hundreds of pounds and appear to be reflected in the figure estimated in para 130.
At their meeting of 21\textsuperscript{st} December 2004, the committee requested that I let them have some additional information in relation to two matters.

1. What were the origins of the OSCR model of charity regulation?

1.1 The Commission on the future of the Voluntary Sector in Scotland (the Kemp Commission) was set up in 1995 by CVO and reported in 1997. In relation to future regulation of the sector this Commission recommended the creation of a Scottish Charity Registrar with responsibility for maintaining a Register of Scottish Charities and also for offering advice to Scottish Charities: the Scottish Charities Office (SCO) should retain their existing role in relation to the investigation of charities and the taking of regulatory action.

1.2 The Scottish Charity Law Review Commission (the McFadden Commission) was established in 2000 and reported in the Summer of 2001. In relation to the supervision and regulation of charities this Commission recommended the establishment of a body to be called “CharityScotland”. The intention was that this body would take on the role of charity registrar, regulator and also provide support for charities in Scotland. On the basis of this proposal, the functions of the SCO in relation to the investigation of charities would have been transferred to CharityScotland, but the SCO would have remained responsible for taking regulatory action against charities.

1.3 The Scottish Charity Law Advisory Forum was established by the Scottish Executive in early 2002. No formal report was published. Its purpose was to act as a forum for discussion and to inform legislative proposals post McFadden Commission.

1.4 On 29 May, 2003 the then Minister for Communities, Margaret Curran, made a Ministerial statement to the Scottish Parliament announcing the creation of OSCR as an Executive Agency, to take over the work of SCO, with enhanced resources to allow it to carry out monitoring, to gather intelligence and to provide a central authority to receive and monitor charities’ annual accounts. The statement envisaged the possibility of putting OSCR on a statutory footing at a later date, and made a commitment to further consultation on the content of the legislation and a further statement to the Parliament later in the year.

1.5 On 24 September, 2003 Ms. Curran made a further statement indicating that legislation would be introduced which would transform OSCR into an independent statutory regulator with an enhanced range of powers and an obligation to maintain a publicly accessible charity register.

1.6 In December, 2003 the functions of the Scottish Charities office were transferred to OSCR.

2. In relation to the second part of the Charity test, namely the “Public Benefit" test, what are the differences between the proposed Scottish approach and the proposed Westminster approach?
2.1 Section 7(1) of the Scottish Bill proposes to repeal the whole of the existing law and to replace it with a new two part charity test for Scotland. A body will meet the charity test if its purposes consist only of one or more of the charitable purposes which are set out in Section 7(2) and if, in addition, it provides public benefit in Scotland or elsewhere. Section 8 of the Bill goes on to set out certain criteria which the Office of the Scottish Charity Regulator (OSCR) and the Court should take into account in determining whether a potential Charity provides sufficient public benefit. These criteria are

(i) A comparison of any benefit gained by members of the body as a result of its activities with the benefits gained by the public at large; and

(ii) If the benefit is provided only to a section of the public, whether any condition for obtaining the benefit is unduly restricted.

2.2 The Scottish Bill proposes to repeal the entire existing body of case law. This case law provides, amongst other things, the tests which are currently applied in both Scotland and in England and Wales to establish what constitutes “public benefit”. Only two of these criteria are repeated in Section 8 of the Scottish Bill. It is unclear whether the remaining tests have any applicability in Scotland.

2.3 The Westminster Charities Bill also adopts a superficially similar two part test, with “public benefit” the second part of the test. But there the resemblance ends. The English Bill retains the existing law as a starting point, rather than repealing it. In the context of the second part of the revised charity test this means that it retains all of the existing tests of what is meant by “public benefit” and applies all of them to all charities across the board.

2.4 The joint Committee of the House of Lords and the House of Commons which is considering the Westminster Bill has now recommended that the English Bill should either include non exclusive criteria in a similar way to Section 8 of the Scottish Bill or provide for non binding statutory guidance to be issued by the Home Secretary to the Charity Commission. This does not really reduce the gulf between the “public benefit” tests in the two jurisdictions, because there remains the differences in the way that the two Bills treat the existing case law.

2.5 The Charity Commission for England and Wales have already indicated that in applying the public benefit test within their jurisdiction they will apply the principles already established by certain cases. All of these principles would be repealed in Scotland by the proposals of the Scottish Bill and would therefore form no part of Scots Law. It is therefore questionable to what extent OSCR could use these cases as the basis for issuing guidance in Scotland, and until OSCR’s guidance is tested in court, no-one (including OSCR) will know whether that guidance is in fact authoritative or whether it will require to be entirely rewritten.

2.6 The first part of the Scottish charity test is also narrower in its scope than is the first part of the Westminster charity test. The cumulative affect of all this is that both parts of the Scottish definition are much more restrictive than both its English equivalent and also the present UK wide definition and so the charitable status of
many Scottish Charities may be endangered. It remains my view, as expressed before the Committee, that there will be quite a number of charities which will experience these difficulties. These charities will be working in many areas of charitable endeavour.

2.7 I have covered the question of the Scottish Charity test fully in my submission to the Communities Committee in relation to the principles of the Bill.

SUPPLEMENTARY SUBMISSION FROM OFFICE OF THE SCOTTISH CHARITY REGULATOR

1.0 INTRODUCTION

1.1 Introduction

The Office of the Scottish Charity Regulator (OSCR) is an Agency of the Scottish Executive and the new regulator of charities in Scotland. The successor to the former Scottish Charities Office, OSCR was formally launched on 16 December 2003. The Agency model enables OSCR to work independently of Ministers in our day-to-day tasks, but within Scottish Ministers’ strategy for Scottish Charity Law Reform and Regulation.

OSCR has a dual role.
• To develop a Regulatory Framework, operating within the existing legislation.
• To manage the transition to OSCR’s statutory successor.

In addition to the pre-legislative discussions and the seminars organised by the Scottish Executive/SCVO, OSCR senior staff have discussed the Bill in detail with other Regulators, intermediaries and individual charities. The views, options and costs we offer are therefore those of the current Regulator, based on the extensive historic experience of the Scottish Charities Office combined with recent OSCR experience in developing a Regulatory Framework.

1.2 Resource Assumptions

The resource assumptions are based on the consultation draft of the Bill. In some areas the Bill is explicit in terms of procedure as well as function e.g. specifying that OSCR, after consultation, will issue guidance on the new charity test. In other areas there is greater discretion.

In preparing the Impact Assessment we have taken into account:

(a) The need for absolute transparency. In debating the Bill, Parliament will need to be aware of the full costs of what is proposed together with a full range of options.

(b) Ministers in allocating resources must be alive to the requirements to adequately resource any Regulator to enable them to undertake their statutory responsibilities.
(c) The remit of the Bill is to increase public confidence. It will be counterproductive to develop a regime which is under-resourced at the outset, and to create a credibility gap between legitimate expectations based on the Bill, and available resources.

1.3 Key Variables

In terms of function, there are a number of variables which will impact on resource requirements. Key variables include:

(a) How proactive OSCR is expected to be in monitoring for the new charity test. This is explicit in the consultation paper, but not in the Bill.

(b) The scope of the new appeal process e.g. a third party right of appeal would add significantly to costs.

(c) The extent of the consent regime introduced by the Bill.

(d) The detail of transition provisions, which is related to (a).

1.4 Current Resources

Resources currently available to OSCR are set out in the Corporate Plan 2004-06. OSCR’s current annual budget is £2.16 million together with start up costs of £690,000.

<table>
<thead>
<tr>
<th>TABLE 1.1</th>
<th>OSCR BUDGET BREAKDOWN 2004/05</th>
</tr>
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<tbody>
<tr>
<td><strong>OPERATIONAL COSTS</strong></td>
<td>£</td>
</tr>
<tr>
<td>Rental and services</td>
<td>210,000</td>
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<tr>
<td>Salaries, training and recruitment</td>
<td>775,000</td>
</tr>
<tr>
<td>Specialist legal and agency support</td>
<td>190,000</td>
</tr>
<tr>
<td>Operating costs</td>
<td>295,000</td>
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<tr>
<td><strong>SET-UP COSTS</strong></td>
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<tr>
<td>Initial costs, including updating index and research</td>
<td>150,000</td>
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<tr>
<td>Monitoring set-up including consultation</td>
<td>240,000</td>
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<tr>
<td>Database design and implementation</td>
<td>300,000</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td>2,160,000</td>
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The Inland Revenue are currently responsible for recognising charitable status. The Inland Revenue has a staffing complement, based in Edinburgh, of 5. It is not currently envisaged that IR resources will transfer to OSCR, although the function will transfer.

2.0 The Business Model

2.1 Introduction
In developing the options and costing analysis, we have adopted as a business model, the European Framework Quality Management allowing an objective assessment of resource requirements.

Not only is this a well recognised model in business terms but it is recommended by the Scottish Executive. The model allows us to take into account all internal Scottish Executive requirements as well as the specific functions described in the Bill.

2.2 Structuring the options and costing analyses

OSCR operations are described under each of the following headings:

1. Leadership and governance – comprising options and costs for the overall management and corporate governance of OSCR. This includes Board requirements and expenses, development of policy and strategy, consultation production and response handling, developing stakeholder participation structures, co-operation with other regulators, compliance arrangements, and resourcing of the new appeals process.

2. People management - comprising recruitment, relocation, induction, training and people development options and costs, and costs associated with accessing additional skills and capacity from the marketplace

3. Information management – comprising records management, freedom of information publications and enquiries, data protection, research and evaluation etc

4. Resources – comprising the options and costs for the resource levels (people, accommodation, corporate ICT, vehicles, utilities, consumables), procurement processes and financial controls needed to ensure OSCR maximises the efficiency and effectiveness of its processes and can fully comply with requirements of financial accountability

5. Functions - comprising options and costs for OSCR’s six key areas of operational responsibility – charitable status, the charities register, monitoring, investigation, information provision and guidance.

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1 Promoting excellence in Scotland: A guide to quality schemes and delivery of public services (this model is also recommended by the Scottish Executive for public bodies.
2 On Board: A guide for board members of public bodies in Scotland by Scottish Executive 2003
3. The options and costs

Each activity and function is considered in turn to identify the necessary resources, the associated costs and the proposed organisational structure.

We have described and costed three options:
1. A significant and extensive proactive option.

2. A minimum and reactive option, in many cases a backward step.

3. A pragmatic option, which in all cases is our preferred option as being realistic in relation to statutory requirements and anticipated resources.

The following table summarises the outcome of the three options described in the full text.

<table>
<thead>
<tr>
<th>TABLE 4.1 COMPARISON OF OPTIONS 2006/07</th>
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<tbody>
<tr>
<td><strong>Element</strong></td>
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<tr>
<td>----------------------------------------</td>
</tr>
<tr>
<td>Leadership and governance</td>
</tr>
<tr>
<td>People management</td>
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<tr>
<td>Information management</td>
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<tr>
<td>Resources</td>
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<tr>
<td><strong>Functions</strong></td>
</tr>
<tr>
<td>Charitable status</td>
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<tr>
<td>Charities Register</td>
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<tr>
<td>Monitoring</td>
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<tr>
<td>Investigation</td>
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<tr>
<td>Information</td>
</tr>
<tr>
<td>Guidance</td>
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<tr>
<td><strong>Total</strong></td>
</tr>
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The pragmatic option allows OSCR to be:

- pro-active in applying the Charity test
- resourced to deal with the new appeals process
- able to provide a consent regime as set out in the draft Bill
- capable of dealing with SCIOs which may be subject to a more detailed monitoring regime

To the extent that these requirements are removed or reduced, OSCR would be in a position to reduce certain operating costs.
4.3 Five year projection (based on the Pragmatic option)

Based on the set-up costs and subsequent running costs of OSCR 2, the envisaged indicative allocation for the period from 2005-06 until 2009-10 is set out in Table 4.3.

The indicative projection is based on the following assumptions:

**Inflation** is assumed to be 3% per annum

**Salary** settlements assumed to be 3% per annum in real terms

**IT replacement**: assumed significant capital spend in new generation ICT by 2009-2010

Projections have allowed for a 3% inflation allowance.

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<td>Leadership and governance</td>
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<td>People management</td>
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<td><strong>Total</strong></td>
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<td>£3,960,350</td>
<td>£4,134,224</td>
<td>£4,758,251</td>
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SUBMISSION FROM INSTITUTE OF CHARTERED ACCOUNTANTS OF SCOTLAND

The existing audit requirement depends on whether or not a charity is a limited company.

Charitable Companies
If a charity is a limited company then the Companies Act 1985 applies. Only charitable companies with an income of more than £250,000 per annum require an audit. Please note that Charitable companies with an income of more than £90,000 but not more than £250,000 per annum although audit exempt, do require an accountants’ report. There are further rules in relation to audit exemption for charitable companies which are parent or subsidiary undertakings. The recently introduced Charities Bill for England and Wales proposes increases to the above audit exemption thresholds. The Bill will amend the Companies Act 1985 and thus will impact on charitable companies registered in Scotland.

Charities that are not Companies
The Charities Accounts (Scotland) Regulations 1992 currently apply to such charities. These require that charities with an income or expenditure greater than £100,000 per annum require an audit. Those charities which have an income or expenditure less than £100,000 are required to have an independent examination. These regulations will be superseded by the regulations to be issued under the Charities and Trustees Investment (Scotland) Bill. It is likely that regulations issued under this Bill will amend the thresholds in relation to charities which are not companies. It is also possible that these regulations may also place additional requirements on charitable companies registered in Scotland.

Audit
All statutory audits of charities are required to be undertaken by registered auditors. The audits should be undertaken in accordance with UK Auditing standards issued by the Auditing Practices Board (APB). The APB has recently announced that it will be introducing International Standards on Auditing for the audits of entities with accounting periods commencing on or after 15 December 2004. The change in the standards will require the auditor to spend a greater amount of time assessing the entity’s control environment at the outset of the audit. There will therefore be a slight change in the emphasis of the audit but in general (in particular smaller charities) there will be no significant change to the way in which an audit is carried out.

It should be noted that an audit is carried out to enable an auditor to express a view on the truth and fairness (or otherwise) of the charity’s financial statements.

Right and Duty of Auditors and Independent Examiners to Report to OSCR
In our view the Bill as currently drafted gives auditors and independent examiners the right to disclose information about a charity to OSCR for the purposes of enabling OSCR or assisting OSCR to exercise its functions. We are lobbying for further amendments to this section of the Bill, for example, we would like to see the introduction of an explicit duty to disclose. The right to disclose as currently drafted
has the potential to impact on the cost of an audit if work on preparing disclosures is charged directly to the charity.

It is possible that OSCR may require some sort of assurance statement from a charity's auditor on information included in a charity's annual return. The annual return will include financial information based on a charity's financial year. There is also a possibility that auditor's may be required to provide a statement commenting on how charity trustees have discharged their responsibilities in relation to their investment powers.

However, at the moment I do not know how likely it is that these additional duties will be placed on auditors or how OSCR may seek assurances regarding the above issues in relation to charities which do not require an audit.

CORRESPONDENCE FROM MINISTER FOR COMMUNITIES TO CONVENER, COMMUNITIES COMMITTEE, DATED 20 DECEMBER 2004

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) BILL: SUPPLEMENT TO FINANCIAL MEMORANDUM

The Financial Memorandum to the above Bill was introduced to Parliament on 15 December as part of the accompanying documents (Ref SP Bill 32-EN). I am writing to provide additional information on the estimated costs to the Scottish Administration for OSCR to implement the Bill's provisions in implementing the provisions in the Bill.

When the Memorandum was prepared, the information available on the expected costs to the Scottish Administration for OSCR to implement the Bill's provisions (paragraph 119 of the Financial Memorandum) was that an additional £1m per annum would be required (in addition to the current budget baseline of £1.3m). This was based on earlier estimates before the detail of the Bill was developed and is what was allocated for OSCR in the 2004 spending review.

However, OSCR has now carried out further analysis of the expected workload and costs based on more detailed assumptions of volume, business process and staffing caseloads. The Executive has therefore allocated a further £1.3m pa for OSCR from 2006-07 (giving a total of £3.6m). In addition, £400,000 extra is to be allocated for 2005-06 to allow OSCR to carry out further work in preparation for implementing the Bill. I understand that OSCR will provide more detail of its resource assessment to the Finance Committee in support of its written evidence in relation to the Bill.
Finance Committee

2nd Meeting 2005 – Tuesday 18 January 2005

Charities and Trustee Investment (Scotland) Bill - Financial Memorandum
Written Submissions

Subsequent to its meeting on 21 December 2004, the Committee has received further submissions from the following:

- Strathclyde Passenger Transport
- Scottish Executive

Terry Shevlin
January 2005

SUPPLEMENTARY CORRESPONDENCE FROM STRATHCLYDE PASSENGER TRANSPORT, DATED 31 DECEMBER 2004

Transport Bill

I hope you will not mind my writing to you further about the Financial Memorandum accompanying the Transport Bill, but there have been two developments since SPT gave evidence. The first is the additional note from the Scottish Executive, dated 9 December 2004 circulated with the papers for your meeting on 14 December. The second is the Ministerial announcement about concessionary travel.

Scottish Executive note (F1/S2/04/33/1)

I do not want to comment in depth on the note of 9 December 2004, but I feel that the first paragraph about the requisition process corroborates the views we expressed in evidence on 23 November. It shows that, far from being a more satisfactory form of funding, as implied in paragraphs 44-5 of the Scottish Executive October 2004 consultation document on statutory regional partnerships, the proposals offer no advantage over SPT’s existing funding regime.

What I would like to touch on, however, is the penultimate paragraph about concurrent bus powers. I feel that these comments are somewhat disingenuous – if the powers are only discretionary, and are most likely to be used in connection with councils’ roads responsibilities, why are they necessary? SPT has always accepted that any quality bus arrangements involving roads provisions will be developed in full partnership with the local council(s) concerned; what we cannot accept, however, is that councils should use their roads responsibilities unilaterally to cut across the role of SPT (or its successor) as the public transport planning and procurement body.

The analysis (particularly in the last sentence of the paragraph) completely misses the point that all of the 2001 Act powers which would be amended are about bus service quality, not the infrastructure aspects of bus provision. With respect to my colleagues in council roads department, these are not matters which fall within the
professional skill sets of roads engineers, and those councils outwith the SPT area which exercise such powers generally employ staff with the necessary public transport qualifications or experience to complement the engineering input. Since those resources are not available to councils in the SPT area, they would have to be acquired, and would consequently increase the call on local funding. The final sentence of the paragraph is therefore misleading.

**Concessionary Travel**

As you recall, Scottish Executive officials appeared before your Committee on 23 November. Jonathan Pryce explained the lack of any reference within the Financial Memorandum to the administrative costs of the proposed national concessionary travel scheme provided for in Clause 37 of the Bill on the basis that these costs were excluded because this part of the Bill’s provisions was permissive (columns 1963-4). (In passing, it is worth remarking that this statement was inconsistent with paragraphs 138 and 148 of the Financial Memorandum, which includes transitional financial provision for the exercise of another purely permissive power, the transfer of SPT’s current rail responsibilities to Scottish Ministers under the provisions of Clause 12 of the Bill).

However, since Jonathan’s evidence on 23 November and his further appearance on 14 December, the Minister has now confirmed his intention to introduce a national concessionary travel Scheme in April 2006, to be operated by the proposed new transport agency.

While the Minister provided some headline costings in his announcement in Parliament on 22 December, his statement left many issues unanswered. For example, although he spoke of a capped expenditure of £159 million on the scheme (Official report, column 13170), he did not make it clear whether this included the administration costs of the Scheme, which will be a new resource requirement for the civil service. The Minister also referred to a “multi-million pound scheme” for the introduction of smart cards to provide a means of monitoring reimbursement (column 13175), but again it was unclear whether this cost would be met from the capped budget. A similar scheme in Yorkshire is budgeted at around £25 million.

From an SPT perspective, we have several major reservations about the costings and practicability of the Minister’s proposals, which appear to have been developed in bi-lateral discussions with the operators’ trade association, CPT, without any input from those currently directly involved in administering concessionary travel arrangements. Consequently, it appears that there is considerable scope for questioning the financial provision that is proposed, and now that the Scottish Executive has signalled its clear intent to make use of these permissive powers – should they be granted – I wonder if there is scope for your Committee to return to this subject before it concludes its consideration of the Bill’s Financial Memorandum.

Please get back to me if you wish clarification of any of the above; meanwhile, all good wishes for the New Year.
SUPPLEMENTARY CORRESPONDENCE FROM MINISTER FOR TRANSPORT’S OFFICE, DATED 13 JANUARY 2005

This email provides the answers to the queries on concessionary travel raised.

Whether there has been an example of an operator not getting the full amount it applied for as a result of a faulty claim or a fraud investigation
We are generally aware that claims from operators are regularly and systematically subject to validation procedures which could result in adjustments to the value of the claims in question. We have asked all 16 local scheme operators for details of any cases involving a faulty claim or fraud. Once we have received responses we will inform the Committee.

The Convener asked for a breakdown (in relation to the £196 million) between the continuation of the existing schemes and new provision or development of the scheme.
The additional £96m in 2006-07 and £100m in 2007-08 for concessionary travel will be used to pay for the national free bus scheme for older and disabled people and the national concessionary travel scheme for young people. These sums are in addition to provision already programmed for concessionary travel of £13m in the transport portfolio budget and £104m currently in the local government finance settlement. As the national bus scheme will be run by Transport Scotland, discussions will take place with COSLA on the share of the £104m which should also be used for the purpose of the national schemes. The national free bus scheme for older and disabled people will replace the current local schemes and expenditure will be capped at a maximum of £159m in 2006-07 and £163m in 2007-08. In 2003-04 £96.6m was allocated for all aspects of concessionary travel (the local bus scheme and concessionary travel on other transport modes through the local government settlement. In addition, £20.1m was provided through central top up grants).