

# Equality Policy 2024-26

Scottish Charity Regulator

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## OSCR Statement of Commitment

The Scottish Charity Regulator (OSCR) is fully committed to carrying out its work in ways that actively encourage equality, diversity and inclusion. As a Scottish Public Body, we will play our part in delivering this national priority in the service of the Scottish public. The Programme for Government 2023 makes it clear that it is committed to ensuring Scotland remains a global leader in equality, inclusion and human rights and we as the regulator fully recognise the role many charities play in achieving this outcome.

We will continue to ensure that equality is an integral part of all our policies and practice and is reflected in our work as charity regulator. The issue of unlawful discrimination may occasionally arise when we consider whether bodies meet the charity test or undertake inquiries into apparent misconduct. Where this occurs, we will require further information from the body or charity.

Our Board and Senior Management Team will continue to show their commitment to equality by ensuring all colleagues are treated fairly, by participating in and promoting learning activities for all staff and continuing to support the cultural change programme which began with the corporate restructure and is embedded in our plans and activities.

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# 1. OSCR

OSCR regulates and is the registrar for Scotland's 25,000 charities. We are a non-ministerial office (NMO) working alongside the Scottish Government and are directly accountable to the Scottish Parliament. We work to ensure that the Scottish public have confidence that the country's charities are well run.

- We provide information to the public about charities and their activities, through our Scottish Charity Register and reporting.
- We offer a range of tools and guidance for charities and the people who run them, to support and encourage improvement in the sector.
- We use our knowledge and intelligence of charities to positively influence and inform the development of national policy, legislation and practice that affects the charitable sector in Scotland.
- We ensure that any wrongdoing in charities is identified, addressed and that the relevant parties are held to account.

## 2. Legislation, OSCR's equality duties and the National Performance Framework

OSCR's equality duties arise from two main sources: the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) and the Equality Act 2010 (the 2010 Act).

### 2.1 Charities and Trustee Investment (Scotland) Act 2005

Section 1(8) of the 2005 Act requires OSCR to perform its functions in a manner that encourages equal opportunities and in particular the observance of the equal opportunities requirement.

### 2.2 Equality Act 2010

The main provisions of the 2010 Act came into force on 1 October 2010 bringing together, updating and strengthening existing anti-discrimination laws. This Act makes it illegal to discriminate on the grounds of any one of the following 'protected characteristics':

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

#### 2.2.1 Application to charities

The 2010 Act applies to charities but, in certain cases, they may be covered by one or more of a number of exceptions. Those that may be relevant to OSCR's functions are:

- the exceptions for charities (sections 193 and 194)
- associations (sections 100 to 107)
- religious or belief organisations (various sections)
- schools (sections 84 to 89)
- further and higher education (sections 90 to 94)
- positive action (sections 158 to 159)

These exceptions are qualified. Charities, broadly speaking, are permitted to restrict their benefits to people who share a protected characteristic if this is in pursuance of a charitable instrument. This restriction must also either be a proportionate means of achieving a legitimate aim or for the purpose of preventing or compensating for a disadvantage linked with the particular protected characteristic.

### **2.2.2 Application to OSCR as a public body**

OSCR is also subject to a general public sector equality duty. This general duty is a single duty that takes in all the protected characteristics and requires public authorities, including OSCR, and those exercising public functions, in the exercise of their functions to have due regard to:

- the need to eliminate discrimination and other conduct prohibited under the Act;
- advance equality of opportunity; and
- foster good relations between persons who share a protected characteristic and those who do not.

## **2.3 Public Services Reform Act (Scotland) 2010**

This policy also contributes towards the delivery of our user focus duty set out by the Public Services Reform (Scotland) Act 2010.

This places a duty on OSCR to make arrangements to secure continuous improvement in user focus in the exercise of its scrutiny functions and demonstrate this improvement. OSCR considers its users as defined in this Act to be the beneficiaries or potential beneficiaries of the charities we scrutinise as well as charity trustees and members of the public generally.

This policy aims to ensure that a user focus is central to our work by considering users at the initial stages of development of new policy and procedure.

## 2.4 National Performance Framework (NPF)

The current Scottish Government's NPF seeks to reduce inequalities in Scotland and sets out a vision for a fair, prosperous, and sustainable Scotland. To help achieve this the NPF sets out National Outcomes which describe the kind of Scotland it aims to create: [National Outcomes | National Performance Framework](#). OSCR aligns its work with the NPF in its regulation and support of Scotland's charities. The NPF and National Outcomes are in the process of being reviewed. It is expected that a revised NPF will be published in Autumn 2024.

## 2.5 Human Rights (Scotland) Bill

The Human Rights (Scotland) Bill is being introduced in the Scottish Parliament in 2024. It seeks to incorporate a range of economic, social and cultural rights into Scots law, and enhance the protection of human rights for everyone in Scotland. Should this Bill be passed we will update all relevant guidance and consider any policy and legal implications within OSCR and with the relevant external partners.

### 3. Regulatory principles

The 2005 Act requires OSCR, in performing its functions, to have regard to the need to be proportionate, accountable, consistent, transparent and targeted only at cases where action is needed. In addition, OSCR has identified that it needs to be fair, informed and independent. This policy is informed by these principles.

OSCR will engage, where appropriate, with other regulatory bodies, particularly the Equality and Human Rights Commission (EHRC), which has the lead role with respect to the promotion, monitoring, and enforcement of equality legislation.

### 4. Previous equality strategies

This is OSCR's fifth Equality Policy.

This policy tries to strike a balance between inward and outward focus, by recognising the role which OSCR as the Charity Regulator for all of Scotland's charities can play in encouraging greater awareness, compliance and transparency in respect of equality issues, amongst the charities we regulate.

### 5. Our commitment

Our Board and Senior Management Team will demonstrate a commitment to equality, diversity and inclusion and take responsibility for progress of the implementation of this policy.

All staff annual objectives include a focus on diversity and inclusion, and throughout the period of this policy and going forward we will support all colleagues to undertake learning which furthers knowledge and understanding of Equality, diversity and inclusion and eliminates bias including unconscious bias.



## 6. Our equality focus

Our legal duties in respect of equality can be summarised as follows:

**‘OSCR will deliver its functions in a manner that encourages equal opportunities, aims to eliminate unlawful discrimination and other conduct prohibited by equality legislation and fosters good relations among all people, particularly between those who may face discrimination and others.’**

To achieve this, we will continue to ensure that everyone within OSCR is aware of their obligations under the duty and understands the importance of equality in what we do. A key part of this is to ensure that we continue to fully incorporate an equalities focus into our work internally, across all our areas of activity.

Ultimately, the beneficiaries, potential beneficiaries and the public who may be impacted by any given charitable activity are at the sharp end of any potential discrimination. We will carefully consider whether charities activities in furtherance of their purposes comply with equality law; whether they meet the requirement to provide public benefit without undue restriction and whether they are causing a level of detriment that outweighs any benefit.

## 7. Implementation

OSCR will meet its equality duties through the following four areas of its work:

- regulatory functions
- service delivery
- policy development
- as an employer.

While the general equality duty does not require us to set equality objectives, we have included a detailed action plan at the end of this paper.

### 7.1 Implementation

We will use our experience to continue to develop how we integrate equality into our regulatory work.

The issue of possible unlawful discrimination arises particularly with respect to two of our functions: identifying and investigating apparent misconduct in the administration of charities and determining whether bodies are charities.

A breach of a legislative duty by charity trustees, including any of the duties set out in the 2010 Act, may be a breach of trustee duties (section 66 of the 2005 Act). OSCR would treat a significant breach as misconduct.

The assessment of public benefit in the context of the charity test can also give rise to questions of charity compliance with the 2010 Act. Section 8(2) of the 2005 Act sets out the factors which OSCR must first consider in deciding whether an organisation can be registered as a charity or whether an existing charity can remain on the Register. OSCR will consider what benefit the organisation provides to the public in exercising its functions and conversely what disbenefit (harm) to the public, or private benefit to an individual arises.

Once this has been done, OSCR will assess how the benefit compares to any private benefit and disbenefit.

If it appears that unlawful discrimination or indeed any other kind of unlawful conduct arises or will arise from an organisation's activities, this is a disbenefit. In the assessment of benefit against disbenefit, OSCR may be entitled to give such disbenefit considerable weight, depending on the particular facts and circumstances of the organisation.

The other factor which OSCR must take into account in reaching its decision on public benefit is whether any condition an organisation imposes on obtaining the benefit it provides is unduly restrictive.

Where an organisation operates a restriction on the provision of benefit which breaches equalities law this will ordinarily be regarded by OSCR as an undue restriction.

However, as our Meeting the Charity Test guidance states, OSCR is required to make a judgement on the whole picture of public benefit in the body being looked at. We will do this on the basis of all the facts and circumstances applying to the organisation. We also recognise that there are situations where rights of specific groups conflict and where our approach may need to take account of all rights involved.

## **7.2 Service delivery**

All members of staff have a role to play in ensuring those with whom we come into contact are dealt with in a manner consistent with our equality duties. This requires staff training, and also ensuring that our services and information have a good level of accessibility.

### **7.2.1 Staff training**

All OSCR staff will continue to be appropriately trained and have an understanding of equality, diversity and inclusion and how these impact on their work. Training will be tailored depending on the particular relevance of equality law to their role, although baseline equality, diversity and inclusion awareness training is provided for all staff and Board members.

### **7.2.2 Accessibility**

Given OSCR's wide range of stakeholders and the diverse needs of individuals we deal with, we have put a lot of effort into ensuring that the services and information we provide are accessible. We will continue to review and monitor our main communication channels and identify areas for improvement such as developing guidance in varying formats, improving our website's search functionality, and restructuring our website content to ensure information is clear and accessible.

We carry out regular assessments of our website to ensure it is compliant with the Web Content Accessibility Guidelines (WCAG). An accessibility statement can be viewed on our website.

A key part of our Digital Strategy 2023–26 is implementing tools to improve accessibility in our systems. We will work with the Charity Reference Group, to ‘test’ the accessibility and ease of use of our communications and systems and ensure that any new digital offerings are as accessible to as many stakeholders as they can be. As participants of ‘Happy to Translate’, we consider all requests for translation, interpretation and transcription.

In 2024 we will update and publish our OSCR Brand Guidelines. These guidelines contain information for staff about OSCR’s in-house style for creating documents and written work. As set out in the guidelines, written work should use a [Plain English](#) approach to ensure it is clear, concise and accessible to all readers. A range of branded templates for presentations, documents and email signatures have also been designed with accessibility in mind.

### 7.3 Policy development and engagement

Policy development is fundamental to the way OSCR plans, designs and delivers its functions and the consideration of equality is already part of policy development in OSCR.

We will continue to explore and develop channels for engagement to identify where particular groups are impacted by new policies and to work with them to ensure this impact is as positive as possible

In 2024 and 2025 there will be considerable policy development and engagement as the amendments made to the 2005 Act by the Charities (Regulation and Administration) (Scotland) Act 2023 are implemented. We will be working with groups of charities who have indicated that they will be particularly impacted by the new measures to help us mitigate this impact.

OSCR will undertake work to ensure it is in a position to engage with seldom heard stakeholders, working with organisations which have experience of similar forms of engagement.

When developing policy, we will undertake an equality impact assessment to understand the potential impact on all external audiences. Stakeholders will be consulted on any aspect of policy creation that may have a detrimental effect upon individuals or organisations. That consultation may take several different forms, depending upon which is most appropriate for the affected stakeholders. Where full Equality Impact Assessments are undertaken these will be consulted

on and published on the OSCR website.

## **7.4 As an employer**

OSCR is committed to encouraging diversity and promoting equality and inclusion as an employer.

Our recruitment and HR functions are carried out through an in-house professional HR & Learning Co-ordinator and access to HR Shared Services through the Scottish Government, which develops its procedures and progressive policies following best practice on equality, diversity and inclusion. In line with these policies, we are committed to treating our staff equally, without discrimination because of sex, sexual orientation, marital or civil partnership status, gender reassignment, race, colour, nationality, ethnic or national origin, religion or belief, disability or age.

We consider requests for flexible working or reasonable adjustments for particular needs. The actions are not specifically outlined in the action plan because they are defined by overall Scottish Government policy.

## 8. Recognising the challenges

OSCR has a very specific statutory focus – the registration and regulation of approximately 25,000 charities with a wide group of beneficiaries. As we consider charities' compliance with equality requirements, we will be particularly mindful of the principle of proportionality and relevance to ensure that our other regulatory functions are not neglected.

### 8.1 Equality information

A key challenge (and one identified in the previous strategies) is that OSCR has limited equality information about charities. This remains the position. When organisations apply to us for charitable status, they must clearly state their charitable purposes and beneficiary groups. However, additional equality information held by us about charities is limited.

From our Register we know that a number of charities are concerned with the promotion of equality in one form or another and that a very large number of charities discriminate on grounds of one or more of the protected characteristics in that they identify their beneficiaries in this way.

Other information held by OSCR about charities relates to the processes of status applications, reorganisation applications, requests for our consent to a range of actions, and through investigation and compliance work.


OSCR recognises the importance of collecting and using equality information in identifying priorities for action, assessing the impact of our policies and practices and measuring progress made. We have identified other public sources of information relevant to equality about our users and the public, which we refer to where appropriate.

### 8.2 Information taken from the Scottish Charity Register

Charitable purposes (note that individual charities may register several charitable purposes, and may state they have both these purposes so there will be an overlap):

- 1,257 charities promoting equality and diversity (5% of sector)
- 967 charities advancing of human rights (4% of sector).
- 4,660 charities advancement of religion (19% of sector)

Beneficiary groups (note that charities may register they have more than one type of beneficiary):

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- 11,184 children or young people (45% of sector)
  - 5,084 older people (20% of sector)
  - 5,464 people with disabilities or health problems (22% of sector)
  - 1,353 people of a particular ethnic or racial origin (5% of sector).

In 2025 we will commence the process of publishing the annual reports and accounts of most charities on the Register. This will increase the transparency and accountability of charities and provide the public with easier access to information about a charity's activities and finances.

## 9. Action plan

Progress on the action plan will be reported annually to our Board, and we will feed back publicly in our Annual Report and Accounts.

### Workstream: Regulatory Functions and Policy Development

Action	Resources	Responsible Officer	Timescale
Our risk assessment process will help us identify and take appropriate action on possible unlawful discrimination by charities	Staff time	Head of Regulation and Improvement	Ongoing
We will assess all applications for charitable status or consent for changes to purpose to identify possible unlawful discrimination	Staff time	Head of Regulation and Improvement	Ongoing
We will publish reports and case studies for charities, including learning from inquiries, on equality issues	Staff time	Head of Regulation and Improvement	Ongoing
We will review the MOU with the Equality and Human Rights Commission to describe how we will co-operate in our work	Staff time	Head of Regulation and Improvement	2024



## Workstream: Service Delivery

Action	Resources	Responsible Officer	Timescale
We will continue to develop our accessible services, through engaging with Charity Reference Group, and compliance with e-accessibility guidelines	Staff time	Head of Corporate	Ongoing as required
We will consider and record all requests for translation, interpretation and transcription through OSCR's commitment to the 'Happy to Translate' scheme and use this information to inform future publication plans	Staff time and cost for translation services	Head of Corporate	As required
All publications (guidance and forms) will take account of Plain English principles as outlined in OSCR's style guide	Staff time	Head of Corporate, Head of Regulation and Improvement	Ongoing
All staff and Board members will undertake equality, diversity and inclusion training	Staff time	Head of Corporate	Ongoing
We will assess all complaints against OSCR to identify possible unlawful discrimination or harassment in respect of staff and/or complainer	Staff time	Head of Corporate	Ongoing
We will promote positive behaviour, minimise discrimination and harassment, promote equality and inclusion and deal with any issues which may arise in line with SG policy	Staff time and development and HR support	Head of Corporate	Ongoing

## Workstream: Policy Development

Action	Resources	Responsible Officer	Timescale
Policy development at all levels will involve a written analysis of the policy's effects on equality (Equality Impact Assessment). If a detrimental effect is identified the analysis will include consideration as to whether this can be mitigated	Staff time	Board/ELT	Ongoing
We will explore and develop routes of engagement and sources of information that could provide an evidential base for our decision-making	Staff time	Board/ELT	Ongoing
We will monitor legislative changes and best practice in order to ensure OSCR's policies and strategy are relevant and compliant	Staff time	Head of Regulation and Improvement	Ongoing
We will be working with groups of charities who have indicated that they will be particularly impacted by the new measures to help us mitigate this impact	Staff time, systems development	Programme Board and Project Teams	2024-25