

Question 1

Do you support the general approach of the Commission's proposals – attribution of separate legal personality to qualifying unincorporated associations,

Response: Yes

that separate legal personality should not be dependent on any registration requirement,

Response: No – registration is a small burden compared with the benefits of limited liability

that unincorporated associations should be able to opt out of becoming a Scottish Associations with Legal Personality (SALP),

Response: Yes

and that SALPs will have limited liability although 'culpable' office-bearers and members will continue to incur personal liability for their wrongful actings?

Response: Yes

Question 2

(a) What is your view on the risk of the availability of SALPs creating an incentive to avoid incorporation? Is there a case for limiting SALPs by size? If so, what should the threshold be?

Response: Any potential risk would be minimized by a registration requirement, bringing SALPs in-line with other, incorporated, organisations and also the limiting of the objects of the organisation to non-profit.

(b) Is there any case for requiring SALPs of a certain size to register – if so, which register would be appropriate or would a new register be needed, what would the criteria for registration be, and what would be the sanction for not registering?

Response: It is our opinion that all SALPs be required to undergo some registration requirements, regardless of size. Either a new register, or alongside either of the registers held by OSCR or the Registrar of Companies. It could be very difficult to set a criteria otherwise – some non-profit organisations have large subscription memberships but hold practically nothing in the way of assets – and vice versa. No sanction for non-registration (and the attendant difficulties and expense in administering such sanction) would then be necessary.

Question 3

Should there be any sanction, criminal or otherwise, where an association wrongly holds itself out as a SALP? If yes, what penalty would be appropriate?

Response: Yes, the implication being that, rather than say nothing about the organisation's status, the organisation has used SALP status as an inducement. A searchable register of genuine SALPs would then shift the onus to the third party who should check the register before contracting. There is a risk that if the organisation holds itself out as a SALP, all its

contracts will automatically be void as they have been entered into with a non-existent legal personality, without even the back-up of contracting with the named office-bearers or other legal personality.

Question 4

Should current office-bearers and managers have a right of relief against those in post at the time of a breach of the clause 4 duty? Or should this be left to the constitution?

Response: Yes, but this is properly an internal contractual matter, not for legislation. There is however, a high risk of this being overlooked if a model constitution is not used so it could be legislated for. If proper registers are maintained, with a requirement for changes in office-bearers to be notified, then this would be prima facie evidence of who was in office at the time of the alleged breach.

Question 5

Should the Bill include provision that will avoid multiple or vexatious requests for a SALP's documentation? Should a reasonable interval between requests be specified?

Response: Yes, same/similar to FOI requests.

Question 6

(a) Is it necessary or desirable to restrict the automatic reversion of rights and liabilities upon losing SALP status without dissolving, so as to prevent inadvertent loss of assets or a breach of contractual terms or statutory licences? If so, on what basis should that be done?

Response: No, assets and contracts should automatically become the joint responsibility of the office-bearers at the time of loss of SALP status. Planned loss of SALP status (below) would then not require any actual transfer which is just the sort of burden these organisations are trying to avoid.

(b) Is it necessary to provide that a planned loss of SALP status cannot be proceeded with unless efforts have been made to transfer assets and liabilities to the office-bearers, etc. or the membership have been made aware of the consequences of not doing so?

Response:

Question 7

(a) Should provision be made in the proposed Bill to enable the prosecution of dissolved SALPs?

Response: There doesn't seem to be much point since the rights and obligations of the SALP should pass to the office-bearers on dissolution and the dissolved SALP will have no assets worth suing for.

(b) If yes, against whom should fines resulting from the prosecution be enforceable?

Response: Office-bearers, jointly and severally liable.

(c) Are there any alternatives, such as making an application to court to enable a prosecution to proceed?

Response: As above, not much point.

Question 8

- (a) Do you consider that it should be possible to prosecute unincorporated associations which have lost SALP status for common law crimes committed by it when it was a SALP?

Yes, otherwise an organisation and its “controlling mind” can just bounce around between SALP status and being an unincorporated organisation as and when it suits – avoiding liability for some serious crimes.

- (b) If so, do you consider that any fines arising out of that prosecution should be enforceable against office bearers, managers or members, and what should the extent of their liability be?

Yes, but there should be an opportunity for the office-bearer(s) to show if there are mitigating circumstances.

Question 9

What length of time is needed for associations to prepare themselves to become SALPs?

Response: 12 months or less.

Question 10

Does the draft Impact Assessment adequately capture the costs and benefits of the proposals? If not, can you provide information from which a better assessment can be made?

Response: Yes

Are there any costs or benefits that have been overlooked?

Not that we are aware of.

Question 11

Are there any other issues arising from the proposals we should be aware of?

Response: Not that we are aware of.

Question 12

Are you supportive of the Commission’s proposals on criminal liability of partnerships as set out in the draft Bill?

Response: Yes.