



# Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

## PART 1

### CHARITIES

#### CHAPTER 2

##### SCOTTISH CHARITY REGISTER

###### *The Register*

### **3 Scottish Charity Register**

- (1) OSCR must keep a register of charities to be known as the “Scottish Charity Register” (and referred to in this Act as “the Register”).
- (2) The Register is to be kept in such manner as OSCR thinks fit.
- (3) The Register must contain a separate entry for each charity entered in it setting out—
  - (a) the name of the charity,
  - (b) the principal office of the charity or, where it does not have such an office, the name and address of one of its charity trustees,
  - (c) the purposes of the charity,
  - (d) where the charity is a designated religious charity or a designated national collector, that fact,
  - (e) where—
    - (i) a direction is given under section 11(3), 12(2) or (3), 16(6), 28(3), 30(1) or 31(5) to (9), or
    - (ii) a notice is given under section 31(4),in relation to the charity, the fact that the direction or notice has been given and the date on which it was given,

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- (f) any other information in relation to the charity which the Scottish Ministers by regulations require to be set out in the Register, and
  - (g) any other information in relation to the charity which OSCR considers appropriate.
- (4) OSCR must, despite subsection (3)(b), exclude the information specified in that provision from a charity's entry in the Register if, on the application of the charity (whether together with its application for entry in the Register or separately), OSCR is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.
- (5) OSCR must, if it is satisfied that a direction or notice of a type described in subsection (3)(e) has been complied with or no longer has effect, remove reference to the direction or notice from the charity's entry.
- (6) OSCR must—
- (a) from time to time, review each entry in the Register, and
  - (b) if it considers any information set out in a charity's entry to be inaccurate—
    - (i) amend the entry accordingly, and
    - (ii) notify the charity of the amendment made.

### *Applications*

#### **4 Application for entry in Register**

An application for entry in the Register must—

- (a) state the name of the body making the application (the “applicant”),
- (b) state the principal office of the applicant or, where it does not have such an office, the name and address of one of the persons who, if the applicant is entered in the Register, will be its charity trustees,
- (c) be accompanied by—
  - (i) a statement of the applicant's purposes,
  - (ii) a copy of the applicant's constitution, and
  - (iii) the applicant's most recent statement of account (if any), and
- (d) contain such other information, and be accompanied by such other documents, as may be—
  - (i) required by regulations under section 6(1), or
  - (ii) otherwise requested by OSCR.

#### **5 Determination of applications**

- (1) OSCR may enter an applicant in the Register only if it considers that the applicant meets the charity test.
- (2) OSCR must refuse to enter an applicant if—
- (a) it considers that the applicant's name falls within section 10, or
  - (b) the application must, by virtue of regulations under section 6(1), be refused, but must not otherwise refuse to enter an applicant which it considers meets the charity test.

## 6 Applications: further procedure

- (1) The Scottish Ministers may by regulations make such further provision in relation to the procedure for applying and determining applications for entry in the Register (including applications under section 54(1), 56(1) and 59(1)) as they think fit.
- (2) Such regulations may in particular make provision about—
  - (a) information and documents which must be specified in or accompany an application,
  - (b) the form and manner in which applications must be made,
  - (c) the period within which OSCR must make a decision on an application, and
  - (d) circumstances in which OSCR must refuse to enter a body in the Register.

### *The charity test*

## 7 The charity test

- (1) A body meets the charity test if—
  - (a) its purposes consist only of one or more of the charitable purposes, and
  - (b) it provides (or, in the case of an applicant, provides or intends to provide) public benefit in Scotland or elsewhere.
- (2) The charitable purposes are—
  - (a) the prevention or relief of poverty,
  - (b) the advancement of education,
  - (c) the advancement of religion,
  - (d) the advancement of health,
  - (e) the saving of lives,
  - (f) the advancement of citizenship or community development,
  - (g) the advancement of the arts, heritage, culture or science,
  - (h) the advancement of public participation in sport,
  - (i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended,
  - (j) the advancement of human rights, conflict resolution or reconciliation,
  - (k) the promotion of religious or racial harmony,
  - (l) the promotion of equality and diversity,
  - (m) the advancement of environmental protection or improvement,
  - (n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage,
  - (o) the advancement of animal welfare,
  - (p) any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.
- (3) In subsection (2)—
  - (a) in paragraph (d), “the advancement of health” includes the prevention or relief of sickness, disease or human suffering,
  - (b) paragraph (f) includes—
    - (i) rural or urban regeneration, and

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- (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities,
  - (c) in paragraph (h), “sport” means sport which involves physical skill and exertion,
  - (d) paragraph (i) applies only in relation to recreational facilities or activities which are—
    - (i) primarily intended for persons who have need of them by reason of their age, ill-health, disability, financial hardship or other disadvantage, or
    - (ii) available to members of the public at large or to male or female members of the public at large,
  - (e) paragraph (n) includes relief given by the provision of accommodation or care, and
  - (f) for the purposes of paragraph (p), the advancement of any philosophical belief (whether or not involving belief in a god) is analogous to the purpose set out in paragraph (c).
- (4) A body which falls within paragraphs (a) and (b) of subsection (1) does not, despite that subsection, meet the charity test if—
- (a) its constitution allows it to distribute or otherwise apply any of its property (on being wound up or at any other time) for a purpose which is not a charitable purpose,
  - (b) its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities, or
  - (c) it is, or one of its purposes is to advance, a political party.
- (5) The Scottish Ministers may by order disapply either or both of paragraphs (a) and (b) of subsection (4) in relation to any body or type of body specified in the order.

## **8 Public benefit**

- (1) No particular purpose is, for the purposes of establishing whether the charity test has been met, to be presumed to be for the public benefit.
- (2) In determining whether a body provides or intends to provide public benefit, regard must be had to—
- (a) how any—
    - (i) benefit gained or likely to be gained by members of the body or any other persons (other than as members of the public), and
    - (ii) disbenefit incurred or likely to be incurred by the public,
 in consequence of the body exercising its functions compares with the benefit gained or likely to be gained by the public in that consequence, and
  - (b) where benefit is, or is likely to be, provided to a section of the public only, whether any condition on obtaining that benefit (including any charge or fee) is unduly restrictive.

## **9 Guidance on charity test**

OSCR must, after consulting representatives of the charitable sector and such other persons as it thinks fit, issue guidance on how it determines whether a body meets the charity test.

## *Charity names*

### **10      Objectionable names**

- (1) A body's name falls within this section if it is—
  - (a) the same as, or too like, the name of a charity,
  - (b) likely to mislead the public as to the true nature of the purposes of the body or of the activities which it carries on, or intends to carry on, in pursuit of those purposes,
  - (c) likely to give the impression that the body is connected in some way to the Scottish Administration, Her Majesty's Government in the United Kingdom or any local authority, or with any other person, when it is not so connected, or
  - (d) offensive.
- (2) The reference in subsection (1)(b) to a body's purposes are—
  - (a) in the case of an applicant, the purposes set out in the statement accompanying its application,
  - (b) in the case of a charity, the purposes set out in its entry in the Register, and
  - (c) in the case of an SCIO proposed in an application under section 54(1), 56(1) or 59(1), the purposes set out in the SCIO's proposed constitution accompanying the application.

### **11      Change of name**

- (1) A charity may change its name only with OSCR's consent.
- (2) A charity which proposes to change its name must, not less than 42 days before doing so, give notice to OSCR specifying its proposed new name.
- (3) Unless OSCR, within 28 days of the date on which a notice is given under subsection (2), directs the charity not to change its name, OSCR is to be taken as having given its consent.
- (4) OSCR may refuse to consent to a charity changing its name only where it considers that the proposed new name falls within section 10.

### **12      Power of OSCR to require charity to change name**

- (1) A charity may, if it considers that the name of another charity is too like its name, request OSCR to review the names.
- (2) OSCR must, if satisfied following such a review that the names of two charities are too alike, direct either one or both of the charities to change its name.
- (3) OSCR must, where at any other time it considers that a charity's name falls within section 10, direct the charity to change its name.
- (4) Section 11 applies in relation to a change of name in compliance with a direction under this section (and the charity directed must give notice of its proposed new name under subsection (2) of that section within such period as may be specified in the direction).
- (5) OSCR must remove from the Register any charity which fails to comply with a direction under this section.

### *References to charitable status*

#### **13 References to charitable status**

- (1) A body entered in the Register may refer to itself as a “charity”, a “charitable body”, a “registered charity” or a “charity registered in Scotland”.
- (2) If such a body is established under the law of Scotland, or is managed or controlled wholly or mainly in or from Scotland, it may also refer to itself as a “Scottish charity” or a “registered Scottish charity”.
- (3) A body which refers to itself in any of the ways described in subsection (1) is to be treated as representing itself as a body entered in the Register.
- (4) A body which refers to itself in any of the ways described in subsection (2) is to be treated as representing itself—
  - (a) as a body entered in the Register, and
  - (b) as being established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland.

#### **14 Exception for certain bodies not in Register**

A body which is not entered in the Register may, despite section 13, refer to itself as a “charity” without being treated as representing itself as a charity if, and only if—

- (a) it is—
  - (i) established under the law of a country or territory other than Scotland,
  - (ii) entitled to refer to itself as a “charity” (by any means or in any language) in that country or territory, and
  - (iii) managed or controlled wholly or mainly outwith Scotland,
- (b) it does not—
  - (i) occupy any land or premises in Scotland, or
  - (ii) carry out activities in any office, shop or similar premises in Scotland, and
- (c) in making that reference, it also refers to being established under the law of a country or territory other than Scotland.

#### **15 References in documents**

- (1) The Scottish Ministers may by regulations require each body entered in the Register to state, in legible characters—
  - (a) that it is a charity,
  - (b) such other information as may be specified in the regulations,on such documents issued or signed on behalf of the charity as may be so specified.
- (2) Such regulations may—
  - (a) exempt charities, or charities of a particular type, from any of the requirements imposed by the regulations,
  - (b) provide that any statement required by them may, in the case of documents which are otherwise wholly or mainly in a language other than English, be made in that other language.

## Changes

### 16 Changes which require OSCR's consent

- (1) A charity may take any action set out in subsection (2) only with OSCR's consent and in accordance with any conditions attached to any such consent.
- (2) Those actions are—
  - (a) amending its constitution so far as it relates to its purposes,
  - (b) amalgamating with another body,
  - (c) winding itself up or dissolving itself,
  - (d) applying to the court in relation to any action set out in paragraphs (a) to (c).
- (3) Subsection (1) does not apply in relation to any action—
  - (a) in pursuance of an approved reorganisation scheme, or
  - (b) for which OSCR's consent is required by virtue of any other enactment.
- (4) Where a charity proposes to take any action set out in subsection (2) it must, not less than 42 days before the date on which the action is to be taken, give notice to OSCR of the proposal specifying that date.
- (5) In the case of an action set out in subsection (2)(a), the charity must not proceed unless and until OSCR has given its consent.
- (6) In any other case, unless OSCR, within 28 days of the date on which notice is given under subsection (4)—
  - (a) refuses its consent, or
  - (b) directs the charity not to take the action for a period of not more than 6 months specified in the direction,OSCR is to be taken as having consented to it.
- (7) A direction under subsection (6)(b)—
  - (a) may be revoked at any time,
  - (b) may be varied, but not so as to have effect for a period of more than 6 months from the date on which it is given.
- (8) Where OSCR gives such a direction it must, after making such inquiries as it thinks fit—
  - (a) give its consent, whether or not subject to conditions, or
  - (b) refuse its consent.

### 17 Notification of other changes

- (1) A charity must give OSCR notice of—
  - (a) any change in—
    - (i) the principal office of the charity, or
    - (ii) where it does not have such an office, the name or address of the charity trustee specified in the Register (or which would, but for section 3(4), be so specified),
  - (b) any change in any other details set out in its entry in the Register,
  - (c) any change to its constitution,
  - (d) any action set out in section 16(2)(b) to (d) which the charity has taken,

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- (e) any administration order or an order for winding up made by the court in respect of the charity,
  - (f) the appointment of a receiver in respect of any of the charity's property, setting out the date on which the change, action, order or appointment took effect.
- (2) Subsection (1) does not apply in relation to any action which requires OSCR's consent under section 16.
- (3) A notice under any of paragraphs (a) to (d) of subsection (1) must be given within 3 months of the date of the change or action to which it relates.
- (4) A notice under paragraph (e) or (f) of subsection (1) must be given within 1 month of the date of the order or appointment to which it relates.

### *Removal from Register*

#### **18 Removal from Register**

OSCR must, within 28 days of the date on which it receives an application from a charity for removal from the Register—

- (a) remove the charity from the Register, and
- (b) give it notice of the date on which it is removed.

#### **19 Removal from Register: protection of assets**

- (1) A body removed from the Register (under section 18 or otherwise) continues to be under a duty to apply—
- (a) any property previously acquired, or any property representing property previously acquired,
  - (b) any property representing income which has previously accrued, and
  - (c) the income from any such property,
- in accordance with its purposes as set out in its entry in the Register immediately before its removal.
- (2) Despite the removal of a body from the Register, the provisions of this Part set out in subsection (3) continue to apply to the body, but only so far as they relate to property and income referred to in subsection (1).
- (3) Those provisions are—
- (a) in Chapter 4—
    - sections 28 and 29,
    - section 31(1) to (3) and (5) to (9),
    - section 32,
    - section 33(2) to (5),
    - section 34(1) to (3), (5)(a) to (c) and (f) to (h), (7) and (10)(b), and
    - section 37, and
  - (b) in Chapter 6, sections 44 and 45.
- (4) The Court of Session may, on an application by OSCR, approve a scheme prepared by OSCR in accordance with regulations made by the Scottish Ministers for the transfer

to a charity specified in the scheme of any property or income which a body removed from the Register is required to apply in accordance with subsection (1).

- (5) The court may approve such a scheme only if it is satisfied—
  - (a) that it is necessary or desirable to act for the purpose of protecting the property or income to which the scheme relates or securing a proper application of such property or income for the purposes which were set out in the body's entry in the Register immediately before its removal, and
  - (b) that those purposes would be better achieved by transferring the property and income to a charity.
- (6) The court may approve a scheme under subsection (5) subject to modifications.
- (7) A charity receiving property or income in pursuance of a scheme approved under subsection (5) may apply that property or income for its purposes as it thinks fit.
- (8) The Scottish Ministers may by order disapply subsections (1) to (7) in relation to any property specified in the order.
- (9) An order under subsection (8) may make provision in relation to particular items or types of property or in relation to property owned by particular persons.
- (10) It is not competent for such order to make provision in relation to property which is not owned by a charity on the day the order takes effect.