



Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

PART 1

CHARITIES

CHAPTER 2

SCOTTISH CHARITY 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,

Status: This is the original version (as it was originally enacted).

- (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
 - (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.