

## **EXECUTIVE NOTE**

### **THE CHARITIES REFERENCES IN DOCUMENTS (SCOTLAND) REGULATIONS 2007 SSI/2007/203**

The above Regulations were made in exercise of the powers conferred by section 15 of the Charities and Trustee Investment (Scotland) Act 2005 (“the Act”). The Regulations are subject to negative resolution procedure.

#### **Policy Objectives**

Section 15 of the Act allows Scottish Ministers to make regulations requiring each body entered on the Register to state that it is a charity, and to include any other information specified on such documents issued by or on behalf of the charity. It also allows Ministers to exempt charities from these regulations and to provide that any statement required may be included in a language other than English, if the document is wholly or mainly in that other language.

Section 14 of the Act allows certain bodies not entered on the Register to refer to themselves as charities if they are a) established under the law or territory of a country other than Scotland, entitled to refer to themselves as a charity in that country or territory and managed or controlled wholly or mainly outwith Scotland, and b) if they do not occupy land or premises in Scotland or do not carry out activities in any office, shop or similar premises in Scotland. Section 14(c) provides that if such a body refers to itself as a charity, it must also refer to the fact that it is established under the law of a country or territory other than Scotland. This requirement extends to bodies making such a reference on documents distributed in Scotland.

There is already legal precedent in England and Wales, in the Charities Act 1993, requiring charities with an income of over £10,000 to include certain specified information in specified documentation. Company Law also requires all companies to include the company name and number on named documents. There has been widespread support to introduce regulations in Scotland which mirror the legislative requirements on charities and charitable companies in English Charity Law and in Company Law.

The purpose of these regulations is to make provision for the information that must be provided by charities, and on which documents it must be provided. These Regulations will provide transparency between the public and charities, so that the public will be aware of when they are dealing with a charity. The regulations list the types of documents that the required information must be provided on. Cheques have been excluded from the list following concerns raised during the consultation period. Charities were concerned about the level of costs they would have to incur in changing the information detailed on their cheques. They were also concerned about the limited space available on cheques to include additional information.

These Regulations apply to all bodies entered on the Scottish Charity Register, however, they only apply to documents issued after 31 March 2008 to allow charities time to change and update their documents in order to avoid unnecessary wastage of stationery. A charity entered on the Scottish Charity Register after 30 September 2007, has 6 months before the

documents it issues have to comply with these Regulations. This is to give charities time to use up any existing stationery, considering they will not know their charity number until they are registered.

All charities, or any person writing on behalf of a charity, must include the charity's name (as entered on the Register), any other name by which it is commonly known, a reference to its charitable status (if not clear from the charity's name) and its registered charity number in legible characters, on the specified documents. Requiring each charity to include its name, number and charitable status on the specified documents will allow the public to be confident that they are donating to a registered charity. The charity can include the information in handwriting, or by means of sticker or stamp if they so wish, although this information must be given in legible characters.

The charity name, number and status must be stated in English, except where the document is wholly in a language other than English, in which case the information may be in that other language.

### **Consultation**

The proposals for the Regulations were the subject of a consultation exercise from 20 September 2005 to 13 December 2005. The consultation involved a range of key stakeholders, including national and local voluntary sector intermediary organisations, representative bodies of particular groups of charities and benevolent bodies, professional bodies, local authorities, and all those organisations which have responded to previous Executive consultations on charity law reform. The consultation report was published in July 2006. The Office of the Scottish Charity Regulator (OSCR) have been consulted on the list of documents to ensure all necessary documents are captured in the regulations.

### **Financial Effects**

There are some costs associated with these Regulations. It is not possible to provide accurate estimates of the expected compliance costs. These will vary depending on the size and type of charity, but are expected to be nominal. The main cost is likely to be from having to ensure stationery and other documents include the new information to meet the new requirements. Although the regulations come into force on 1 April 2007, only documents issued after 31 March 2008 must comply with the regulations, to allow bodies time to use up existing stocks, and hence minimise costs. In addition, there is no requirement for the documents to be reprinted. The required information may be added to existing documents by hand, stamp or sticker and the cost of doing this should be minimal. Some charities may incur small costs in adding the information to computer templates if they do not have the expertise to do this themselves, however this will be a one off cost.

A Regulatory Impact Assessment has been prepared and will be available at <http://www.scotland.gov.uk/Topics/Business-Industry/support/15242/1462>.

Scottish Executive Development Department  
6 March 2007

**CHARITIES AND TRUSTEE INVESTMENT  
(SCOTLAND) ACT 2005**

**Charities References in Documents (Scotland)  
Regulations 2007**

**Regulatory Impact Assessment**

**Scottish Executive  
March 2007**

# **CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005: CHARITIES REFERENCES IN DOCUMENTS (SCOTLAND) REGULATIONS 2007**

## **FINAL REGULATORY IMPACT ASSESSMENT**

### **Introduction**

This Regulatory Impact Assessment aims to provide information on the options considered in relation to regulations under Section 15 of the Charities and Trustee Investment (Scotland) Act 2005 on References in Documents for charities registered on the Scottish Charity Register, and their likely impact on the charitable sector. Under Scottish Cabinet rules, any piece of legislation which will create or extend a regulatory regime must include a consideration of the impact of regulation on the relevant sector.

### **Purpose and intended effect of regulations**

#### ***(i) Objectives***

The Scottish Executive is committed to reforming the regulatory regime for charities, in order to support the charities sector and to safeguard the public interest in relation to charities. The Charities and Trustee (Scotland) Act 2005 has received Royal Assent.

This RIA provides background information on the options which were considered in developing the proposals, and the probable impact and cost of these options.

**Devolution:** The regulations will only apply to bodies registered on the Scottish Charity Register, and documents issued or signed on behalf of them.

#### ***(ii) Background***

The Charities and Trustee Investment (Scotland) Act 2005 received Royal assent on 14 July 2005. Proposals for the Bill had been consulted on during the summer of 2004.

Section 15 of the Act confers powers on Ministers to make regulations to require each body registered on the Scottish Charity Register to state that it is a charity and such other information as may be specified in the regulations on specified documents issued or signed on behalf of the charity. There are currently no such requirements for charities in Scotland, unless they are also registered companies (in which case Companies legislation requires them to identify themselves on legal documents and to identify themselves as charities if the name does not make this clear). Similar requirements already exist in England and Wales for all charities above an income threshold of £10,000 per annum. Many Scottish charities already follow this procedure in practice.

There is a public benefit in having charities identify themselves on documents as it aids transparency, and confidence that unless such identification is shown, the documents do not refer to a registered charity. It allows those doing business with a charity to be aware that there are restrictions (and a regulatory regime) under which the body operates. It also provides basic information which can make it easier for the public to find further details about the charity, either from the charity regulator (OSCR) or from the charity itself. Many charities already choose to identify themselves as a charity, as this can encourage public

confidence and may lead to increased public interest in the document or its contents. On fundraising documents, this can increase the likelihood of greater donations.

### ***(iii) Rationale for government intervention***

The impact of the current position is that with no requirement for charities to identify themselves on documents (unless they are also registered companies), there is often a lack of clarity to the public and parties doing business with charities. This could lead to a lack of confidence in the sector and confusion as to whether a body is a charity or not. Whilst some charities choose to identify themselves because of the benefits they consider this gives, there is no consistency. Hence the impact of the “do nothing” option is for this confusion and lack of consistency to continue.

### ***(iv) Risk assessment***

The new regulations are an important part of the implementation of the Act. Without the new regulations, there would be no mandatory identification of a charity on its documents, possibly leading to a risk for those doing business with charities, confusion and less confidence in the sector as a whole. It may lead to increased incidents of non-charities being able to represent themselves as charities with less chance that such occurrences will be apprehended. The sector itself has called for a more robust regulatory regime and these regulations will form an important part of this. The equivalent legislative requirements in England and Wales are contained on the face of the Charities Act 1993 (clause 5) but it was considered more appropriate for the detailed Scottish requirements to be set out in secondary legislation as it is simpler to update them as practices change over time.

## **Consultation**

The Charities and Trustee Investment (Scotland) Act 2005 was developed following extensive consultation. This RIA and the regulations have been drafted after full consultation on the initial proposals and taking into consideration the responses to those proposals. The consultation involved a range of key stakeholders, including national and local voluntary sector intermediary organisations, representative bodies of particular groups of charities, professional bodies, local authorities, and all those organisations and individuals that have responded to previous Executive consultations on charity law reform

## **Within government**

The following government agencies and departments have been consulted in preparation of this RIA:

Office of the Scottish Charity Regulator (OSCR).

## **Public consultation**

A public consultation was carried out on the proposals for the regulations from September to December 2005. The responses and summary were published on the Scottish Executive website. They are available at

<http://www.scotland.gov.uk/Publications/2006/01/17162900/0>

and <http://www.scotland.gov.uk/Publications/2006/07/26094145/0>.

The consultation report included an outline of the changes we intended to make following the consultation, the majority of which have been included in the regulations laid before Parliament.

## **Options**

### *Option 1: Do nothing*

Not having regulations to require mandatory references to charity status in documents is likely to lead to increased risks for those doing business with charities, and inconsistency across the sector with an increased chance that non-charities can successfully pose as charities. Unless charities are required to identify themselves as such people will find it more difficult to check on the validity of a document or seek further details about the charity either issuing it or on whose behalf it is issued. Without regulations on this, OSCR would not have powers to take regulatory action against a charity failing to provide adequate information. It is likely that without regulations on this matter, OSCR would be forced to issue non-statutory guidance to charities on what identification should be included on their documents, although such guidance would not be enforceable. The regulatory framework of charity law would be undermined and the expected increase in public confidence in charities may not be delivered.

### *Option 2: Require all charities on the Scottish Charity Register to identify themselves on relevant documents.*

This option will ensure that any relevant document issued by or on behalf of a charity will identify the charity, allowing people to check more easily on the charity and seek further information. Any document issued by or for a non-charity should be more easily spotted.

### *Option 3: Require only certain (larger) charities to identify themselves on relevant documents. (i.e. set a threshold below which charities are exempt).*

This option will ensure the larger charities comply with identification requirements on documents, but avoid smaller charities having to do so - possibly saving some nominal expenditure by those small bodies least able to afford it. However, many smaller charities would probably choose to identify themselves as charities anyway, hence negating any saving from being exempt from the regulatory requirements. Not having all charities identified on their documents may undermine the regime and lead to uncertainty in which bodies are charities, and increased likelihood of non-charities confusing the public. It is considered that the nominal savings may be outweighed by the costs to the sector generally of not having as robust a regime

## **Costs and benefits**

### **Business sectors affected**

All bodies entered on the Scottish Charity Register (around 22,000 active charities) and some UK charities which may have to register with OSCR depending on their operations here, will be affected by option 2. Scottish charitable companies (an estimated 3700 charities out of the overall 22,000 Scottish charities) are already required (under Companies legislation) to make similar statements on documents. If option 3 (with an exemption threshold) is adopted, smaller charities would not be affected by the regulations, except there may be a general negative impact on them as a result of confidence in the sector not being boosted as much as

might occur with option 2. Small charities might be disproportionately affected by any potential loss in public confidence and donations, as many smaller charities are probably more reliant on public donations.

## **Benefits**

### *Option 1: Do Nothing*

There are no tangible benefits to this option as there will be no clear regulatory requirements for charities to follow, relying only on individual bodies deciding to identify themselves as charities on documents. Charitable companies already have similar obligations under Companies legislation. This would cause confusion among charities as to what they were required to do to comply with the provisions in the Charities and Trustee Investment (Scotland) Act 2005 and would not provide clarity for the general public. OSCR may choose to provide guidance on what it considers best practice but there would be no regulatory requirement to follow this. The savings to charities not having to include references in documents would be minimal.

### *Option 2: Require all charities on the Scottish Charity Register to identify themselves on relevant documents.*

This option would provide consistency across the Scottish sector and is most likely to reduce the risks for those doing business with charities. It is most likely to lead to increased public confidence in charities as information would be available to the public on all relevant charity documents. Setting out the details in regulations allows the requirements to be easily updated if practices in the sector change and new forms of charity communication and fundraising evolve.

### *Option 3: Require only certain (larger) charities to identify themselves on relevant documents. (i.e. set a threshold below which charities are exempt).*

This option would require only the larger charities to identify themselves on relevant documents, leading to nominal savings for small charities - but only if they choose not to include identification on their documents. In practice many already choose to follow the "normal practice" of identifying their organisation as they consider it provides benefits anyway. Depending on the level of threshold chosen, this could mirror the position in England and Wales (where charities with an income below £10,000 are exempt). This would exempt approximately half of existing Scottish Charities but the savings for them are thought to be only nominal.

## **Costs**

### *Option 1: Do Nothing*

There would be no direct costs to charities from option 1 with no regulatory requirement to identify themselves on documents. However, many charities already do this and would probably continue to do so. There may be indirect costs to charities, particularly small charities more reliant on public donations if confidence in charities is not boosted because transparency is not increased and confusion over whether bodies are charities continues.

*Option 2: Require all charities on the Scottish Charity Register to identify themselves on relevant documents.*

It has not been possible to provide accurate estimates of the expected compliance costs. These will vary depending on the size and type of charity, but are expected to be nominal. The main cost is likely to be from having to ensure any stationery contains the information to meet the new requirements. There is no requirement for charities to reprint stationery, they may add the required information by hand, stamp or sticker for example. The intention to apply these regulations only to documents issued 12 months after the regulations come into force will allow existing bodies to use up existing stocks and should minimise any wastage costs. Many charities, especially larger bodies (which are more likely to be registered companies and hence already required to provide references to this in documents) will probably have little or no additional costs.

Charities that rely on hand-written documents in the main, will not face costs in adding identifying references. Based on a sample quoted cost of some £150 per 1,000 sheets for printed letterheads etc, it may be that if some charities chose to have some stationery reprinted, the cost to each might be £0.15 x average no. of sheets used per year, however there is no requirement to do this. This cost is not expected to be significant in comparison to normal administration costs. Charities will be expected to absorb any additional costs, which should be nominal, in their normal administration costs. In many cases, charities are likely to use PC generated documents, for which additional identification can be easily added at little or no extra cost.

The final regulations have taken steps to limit the number of documents that will be required to carry the information. It will also only affect new documents issued by the charity 12 months after the regulations come into force. It is not possible to provide an accurate estimate of how much time staff and volunteers may have to allocate to the task of adding the information to documents that have not been used up in this time.

*Option 3: Require only certain (larger) charities to identify themselves on relevant documents. (i.e. set a threshold below which charities are exempt).*

If a threshold of £5,000 were chosen, around 9,600 charities with incomes below this would remain unaffected by the regulations. However, as the expected costs for such small charities are small, the savings from this option compared to option 2 are probably nominal.

### **The Small Firms' Impact Test**

The regulations only apply to bodies on the Scottish Charity Register and documents issued on their behalf, and we do not expect that they will have an impact on small firms or micro-businesses.

### **Test run of business forms**

No business forms will be involved in the proposed regulations.

### **Competition assessment**

The proposals will introduce a proportionate and consistent regulatory regime for all charities operating in Scotland. If an exemption threshold is introduced the requirements will be greater for larger charities, and the burdens on even smaller organisations are expected to be



minimal. The main reason for requiring charities to identify themselves as such it to ensure fairness and transparency, in that persons dealing with charities are aware of that fact.

The references in documents regulations for charities are not expected to have any impact on competition. It will make charities activities more transparent, and clarify their status to all who deal with them, both businesses and the public. However it will not distort or restrict competition within markets in which charities operate.

### **Enforcement, sanctions and monitoring**

The provisions will be enforced by the Office of the Scottish Charity Regulator (OSCR). Whilst the Act does not provide a specific offence for failing to comply with the proposed regulations, non-compliance may be taken by OSCR to be misconduct. OSCR has powers under section 31 of the 2005 Act to direct a person or body to take certain action and non-compliance with the direction is an offence. OSCR may suspend any person concerned in the management or control of a charity or body that appears to it to have been responsible for the misconduct. There will be a right of appeal to the Scottish Charity Appeals Panel against any such decision OSCR takes in this regard. Charitable companies failing to comply with the existing requirements are already guilty of a direct offence under companies legislation.

The regulator will be tasked with reviewing implementation of the legislation and regulations, and advising the Executive of any need for change. The Executive will review the impact of the regulations within ten years of them coming into force.

### **Implementation and delivery plan**

The regulations will be laid before the Scottish Parliament on 7 March 2006 and will come into force on 1 April 2007. Only documents issued after 31 March 2008 will have to comply with the regulations, to allow a 12 month period of grace. All charities entered on the register after 30 September 2007 will have 6 months to comply with the regulations.

### **Post-implementation review**

OSCR will be tasked with reviewing implementation of the legislation and regulations and advising the Executive of any need for change.

In addition the Executive will review the impact of the regulations within ten years of it coming into force.

### **Summary and recommendations**

Based on the analysis outlined above and the analysis of the responses to the consultation the Executive recommends the adoption of option 2. The regulations have been drafted on this basis to allow the maximum flexibility for charities while installing firmer requirements to gain and support public trust.

## Declaration and Publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the Responsible Minister .....  
Rhona Brankin

Date .....

## Contact

Any queries about this RIA should be addressed to:

**Fiona Warne**  
Social Inclusion and Voluntary Issues Division  
Scottish Executive Development Department  
2-F, Victoria Quay  
Edinburgh EH6 6QQ  
Tel: 0131 244 4023  
Fax: 0131 244 5508  
Email: [charityact@scotland.gsi.gov.uk](mailto:charityact@scotland.gsi.gov.uk)

Scottish Executive  
DD Charity Law Team  
March 2007